



CITY OF BUFFALO

DEPARTMENT OF LAW

EXHIBIT

E

JAMES KISTNER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-00402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),
Defendants.

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DEPARTMENT OF LAW

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1 Examination before trial of JAMES KISTNER,
2 Plaintiff, taken pursuant to the Federal Rules of
3 Civil Procedure, in the law offices of RUPP BAASE
4 PFALZGRAF & CUNNINGHAM, LLC, 1600 Liberty Building,
5 Buffalo, New York, on February 6, 2020, commencing
6 at 10:20 a.m., before ANNE T. BARONE, RPR, Notary
7 Public.

8
9 APPEARANCES: RUPP BAASE
10 PFALZGRAF & CUNNINGHAM, LLC,
11 By CHAD DAVENPORT, ESQ.,
12 1600 Liberty Building,
13 Buffalo, New York 14202,
14 (716) 854-3400,
15 davenport@ruppbaase.com,
16 Appearing for the Plaintiff.

17
18 TIMOTHY A. BALL, ESQ.,
19 Corporation Counsel,
20 By MAEVE E. HUGGINS, ESQ.,
21 Assistant Corporation Counsel,
22 1137 City Hall,
23 Buffalo, New York 14202,
(716) 851-4334,
mhuggins@city-buffalo.com,
Appearing for the Defendants.

10:20:59 20 J A M E S K I S T N E R, 37 Schmarbeck, Buffalo,
10:21:12 21 New York 14212, after being duly called and sworn,
10:21:12 22 testified as follows:
10:21:19 23

10:21:19 1 EXAMINATION BY MS. HUGGINS:

10:21:19 2

10:21:19 3 Q. Good morning, Mr. Kistner. We met
10:21:22 4 again for a second time just a moment ago off the
10:21:25 5 record. My name is Maeve Huggins. I'm an attorney
10:21:27 6 for the City of Buffalo. We're here today for your
10:21:30 7 deposition in regards to a federal lawsuit that you
10:21:32 8 filed involving an incident with the Buffalo Police
10:21:36 9 Department.

10:21:37 10 Have you given any sworn testimony since
10:21:39 11 your 50-h in June of 2017?

10:21:43 12 A. No.

10:21:43 13 Q. Okay. I'd just like to review the
10:21:46 14 ground rules before we proceed with the deposition.

10:21:48 15 We have -- you're under oath, obviously,
10:21:50 16 and we have a reporter here who's taking down
10:21:52 17 everything that's being said.

10:21:54 18 For the sake of the reporter and so that we
10:21:55 19 have a clean record, I'd ask that you allow me to
10:21:57 20 finish my question before you answer. I'll extend
10:21:59 21 the same courtesy to you and allow you to finish
10:22:01 22 before I move on to the next question.

10:22:03 23 If at any point you don't understand my

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10:22:05 1 question, please let me know. I'm happy to
10:22:08 2 rephrase it.

10:22:10 3 The reporter can only take down verbal
10:22:12 4 responses, so I'd ask that your responses be
10:22:15 5 verbal. To the extent that you want to talk with
10:22:17 6 your hands or demonstrate something, I would just
10:22:19 7 verbalize it for the record so that we have it
10:22:21 8 memorialized.

10:22:22 9 If you need a break at any point, we can
10:22:25 10 take one. I'm just going to ask that if there's
10:22:27 11 a question pending, that you answer it before we
10:22:29 12 break. Fair enough?

10:22:30 13 A. Yeah.

10:22:33 14 Q. Oh. And I should say this: Mm-hmm,
10:22:35 15 shoulder shrugs, yeah, nah, those are difficult for
10:22:40 16 her to record accurately, so I would just ask that
10:22:42 17 you avoid those, if possible.

10:22:44 18 Obviously, at some point this may become
10:22:47 19 conversational, but for the sake of the record, I'd
10:22:49 20 ask that you avoid those type of words.

10:22:51 21 Before coming in today, have you taken any
10:22:54 22 medications within the --

10:22:55 23 A. No.

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10:22:56 1 Q. -- last --

10:22:57 2 MR. DAVENPORT: Yeah. You've got to wait
10:22:59 3 for her to finish her question.

10:23:00 4 THE WITNESS: Okay.

10:23:00 5 BY MS. HUGGINS:

10:23:01 6 Q. It's okay. Everyone does it, and
10:23:03 7 sometimes this becomes conversational, but she is
10:23:06 8 quite literally typing down every word we say.

10:23:08 9 A. Okay.

10:23:09 10 Q. And it's tough if we speak over each
10:23:11 11 other.

10:23:11 12 So before coming in today, in the last
10:23:14 13 24 hours have you taken any medications that would
10:23:16 14 inhibit your ability to give truthful testimony?

10:23:20 15 A. No medications.

10:23:21 16 Q. Okay. Are there any medications that
10:23:23 17 you should have been taking that you did not within
10:23:25 18 the last 24 hours?

10:23:26 19 A. No.

10:23:31 20 Q. Have you consumed any drugs, alcohol,
10:23:33 21 or marijuana within the last 24 hours?

10:23:36 22 A. No.

10:23:38 23 Q. Is there any reason why you can't give

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10:23:40 1 truthful testimony today?

10:23:41 2 A. No.

10:23:43 3 Q. Have you reviewed anything in
10:23:44 4 preparation for your testimony today?

10:23:47 5 A. No.

10:23:49 6 Q. Did you look at any documents in
10:23:51 7 preparation for today?

10:23:52 8 A. No.

10:23:53 9 Q. Review any video?

10:23:55 10 A. No.

10:23:57 11 Q. Review any photographs?

10:23:59 12 A. No.

10:24:02 13 Q. There is obviously some video clips
10:24:04 14 with regard to the incident on January 1st, 2017.
10:24:08 15 When was the last time that you viewed that video?

10:24:16 16 A. Tuesday.

10:24:16 17 Q. Of this week?

10:24:17 18 A. Yeah.

10:24:23 19 Q. Did you review any documents or
10:24:26 20 photographs on Tuesday?

10:24:27 21 A. Yes.

10:24:28 22 Q. Okay. What did you review specifically
10:24:31 23 with regard to video on Tuesday?

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10:24:37 1 A. I watched the first clip.

10:24:41 2 Q. What is the first clip? What does that
10:24:44 3 depict?

10:24:45 4 A. It's the one I got hit in. I call it
10:24:47 5 the first clip.

10:24:48 6 Q. Okay. What documents -- before I move
10:24:58 7 on, any other video that you reviewed on Tuesday?

10:25:02 8 A. No.

10:25:02 9 Q. What documents did you review on
10:25:04 10 Tuesday?

10:25:05 11 A. The transcript of the 50-h hearing.

10:25:12 12 Q. Any other documents?

10:25:13 13 A. No.

10:25:15 14 Q. Did you review any photographs on
10:25:17 15 Tuesday?

10:25:18 16 A. No.

10:25:30 17 Q. I am going to try to not cover the same
10:25:35 18 ground of the 50-h, but for the sake of having to
10:25:38 19 orient you to time frame and place for some of my
10:25:40 20 questions, I may have to do that.

10:25:42 21 If at any point you're not sure about what
10:25:45 22 I'm referring to, please let me know. I want to
10:25:49 23 make sure that we are on the same page in terms of

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10:25:51 1 my questioning. Fair enough?

10:25:52 2 A. Okay.

10:25:55 3 Q. Have you discussed the January 1st,
10:25:57 4 2017 incident with anyone, aside from your
10:26:02 5 attorneys?

10:26:06 6 A. Yes.

10:26:06 7 Q. Who have you discussed that incident
10:26:08 8 with?

10:26:08 9 A. My family.

10:26:10 10 Q. Who in your family?

10:26:15 11 A. My sister Gwen.

10:26:18 12 Q. Anyone else in your family?

10:26:21 13 A. Well, Rachel and I aren't married, but
10:26:24 14 I've talked to Rachel about it.

10:26:27 15 Q. Anyone else aside from Gwen and Rachel
10:26:33 16 that you recall?

10:26:34 17 A. Since when? I mean --

10:26:37 18 Q. Well --

10:26:38 19 A. WIVB. I did an interview with them.

10:26:48 20 Q. Anyone else?

10:26:49 21 A. I can't remember anybody off the top of
10:26:55 22 my head.

10:26:55 23 Q. Have you discussed what you were going

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10:26:57 1 to testify about in this deposition with anyone
10:27:00 2 aside from your attorney?

10:27:03 3 A. No. Other than Rachel.

10:27:12 4 Q. Did you take any photographs of the
10:27:14 5 January 1st, 2017 incident involving the Buffalo
10:27:20 6 Police Department?

10:27:20 7 A. No.

10:27:20 8 Q. Did you take any photographs of any
10:27:23 9 injuries you allegedly suffered from that incident?

10:27:32 10 THE WITNESS: Rachel and Earl used their
10:27:36 11 cell phones, I think, to try to get pictures of my
10:27:39 12 wrists.

10:27:42 13 I'm not exactly sure which one of those cell
10:27:44 14 phones we were able to download, but you got them.

10:27:51 15 Other than that, no.

10:27:52 16 BY MS. HUGGINS:

10:27:52 17 Q. Are you aware of how many photographs
10:27:54 18 were taken of your wrists?

10:27:55 19 A. Not a clue. I mean, off the top of my
10:27:58 20 head, no.

10:27:59 21 Q. Do you know when those photographs were
10:28:01 22 taken?

10:28:06 23 A. The first week of January 2017.

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10:28:10 1 I don't know the day.

10:28:25 2 Q. Are you aware of any camera or
10:28:27 3 surveillance systems that captured any video of the
10:28:31 4 January 1st, 2017 incident involving the Buffalo
10:28:36 5 Police Department?

10:28:36 6 A. Yeah.

10:28:37 7 Q. What camera system or surveillance
10:28:40 8 system are you aware of that may have captured
10:28:44 9 footage on that day?

10:28:45 10 A. Rachel's house at 37 Schmarbeck has
10:28:49 11 a Swann system. I think it has eight cameras.

10:28:56 12 There are two of them that are mounted below
10:28:58 13 the eaves up on the third floor that photograph the
10:29:04 14 front of the house. One on the right and one on
10:29:08 15 the left of those upper windows.

10:29:11 16 Q. When you said two, are you referring to
10:29:13 17 two individual cameras of the eight?

10:29:15 18 A. Yeah.

10:29:17 19 Q. Where are the remaining six cameras
10:29:20 20 positioned?

10:29:20 21 A. In the backyard, where the kids play;
10:29:22 22 or on the side of the house, looking down where the
10:29:29 23 kids play; or on the back of the house, looking to

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10:29:32 1 the right and the left.

10:29:40 2 Q. Who purchased that system?

10:29:50 3 A. Rachel and I went to Walmart, and she
10:29:54 4 paid for it.

10:29:54 5 Q. When was it installed?

10:30:05 6 A. I'm going to guess, 2015. I don't even
10:30:11 7 know the month.

10:30:12 8 Q. How are the cameras in that system
10:30:15 9 activated?

10:30:17 10 A. They run all the time. There are ways
10:30:23 11 you can set it to where they'll just go on when
10:30:27 12 there's motion, but we're not that sophisticated.
10:30:31 13 We never understood how to make that work.

10:30:33 14 So we just took it out of the box, put it
10:30:36 15 on the shelf, plugged it in, wired the cameras up,
10:30:39 16 I mounted them outside, and turned it on. And
10:30:45 17 that's essentially how it's worked ever since we
10:30:48 18 bought it. It's still working like that.

10:30:50 19 Q. Has it been just recording continuously
10:30:52 20 since it was installed?

10:30:53 21 A. I think so, yeah. Unless there's
10:30:55 22 a power failure or something, yeah. But we never
10:30:59 23 turned it off except once, that I remember real

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10:31:03 1 distinctly.

10:31:04 2 Q. When did you turn it off?

10:31:09 3 A. In January of 2017, Jim Ostrowski told
10:31:16 4 me: You have to save the video on that machine.

10:31:22 5 I called Gary, a fellow who had repaired
10:31:25 6 a computer for me, and said, I've got to get this
10:31:28 7 off of here, and I don't know how to do it.

10:31:33 8 We had unplugged the machine I'm going to
10:31:39 9 say 9 o'clock at night on January 1st, which was
10:31:43 10 after all this was over and I was home, because we
10:31:49 11 were told: Don't let it keep running, because we
10:31:53 12 don't know when we're going to get there to
10:31:56 13 retrieve it. Just unplug it, and I'll try to be
10:31:59 14 there tomorrow or the next day.

10:32:01 15 That's what Gary, the guy that told me he
10:32:04 16 was coming to get it, so --

10:32:05 17 Q. Do you have -- I apologize. Continue.

10:32:11 18 A. I don't know when Gary actually showed
10:32:14 19 up. I think it was probably the next day or the
10:32:16 20 day after. We gave him the keyboard, the mouse,
10:32:20 21 and the DVR.

10:32:22 22 We didn't give him any of the cameras
10:32:24 23 because they're all hooked up with leads going

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10:32:26 1 outside.

10:32:27 2 So he took the machine and the keyboard that
10:32:30 3 came with it and the -- does it -- maybe it didn't
10:32:33 4 have a keyboard. Just a mouse and the clicker.
10:32:35 5 The remote control.

10:32:38 6 Q. In terms of hardware of that system,
10:32:42 7 there's eight cameras and then there's what you've
10:32:45 8 called a DVR. Is that -- what is your understanding
10:32:48 9 of what that DVR is and does for the system?

10:32:54 10 A. Just records everything, everything it
10:32:59 11 sees, and then it lets you go back in with the
10:33:01 12 mouse and ask it to replay what is up there.

10:33:06 13 That's about as sophisticated as we ever got
10:33:10 14 with it so we could see what happened outside if
10:33:12 15 something was amiss. We could rewind it and say,
10:33:16 16 what happened here?

10:33:16 17 Q. Do you view the video on the DVR or is
10:33:20 18 there a screen?

10:33:20 19 A. There's a monitor.

10:33:23 20 Q. Is the monitor something apart of the
10:33:26 21 Swann system?

10:33:26 22 A. No.

10:33:27 23 Q. You've hooked the system up to the

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10:33:28 1 monitor?

10:33:29 2 A. Yeah. It's a TV.

10:33:30 3 Q. What is your understanding of how
10:33:33 4 frequently the footage will record over itself?

10:33:38 5 A. I don't know.

10:33:44 6 Q. The two cameras that are affixed
10:33:48 7 under the third-floor eaves on the front of
10:33:52 8 37 Schmarbeck, what areas of the street does those
10:34:00 9 cameras capture?

10:34:03 10 A. The one on the left -- if you're in the
10:34:05 11 house looking out, the one on the left, if you're
10:34:08 12 in the house looking out, looks almost like
10:34:10 13 straight down.

10:34:12 14 The one on the right looks to the left, like
10:34:16 15 you're looking up the street toward Broadway.

10:34:20 16 Q. Are other homes located on Schmarbeck
10:34:24 17 within the view of that second camera you've
10:34:27 18 described?

10:34:32 19 A. 24 -- to a large part, 24 Schmarbeck,
10:34:40 20 that's on that camera. I'm pretty sure you can see
10:34:47 21 the profile of 33 on that camera. The camera on
10:34:57 22 the right, as you're looking toward the street.

10:34:59 23 The camera on the left, I don't think you

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10:35:01 1 can see any other houses. The one that looks
10:35:07 2 almost straight down, I don't think you can see any
10:35:09 3 other houses.

10:35:12 4 Q. Does the camera capture the sidewalk
10:35:18 5 and the streets in front of both 24 and 33
10:35:23 6 Schmarbeck Avenue?

10:35:26 7 A. The one on the right that looks in that
10:35:30 8 direction, yeah, it captures the sidewalk on both
10:35:36 9 sides of the street.

10:35:38 10 Q. Why did you purchase the -- strike
10:35:41 11 that.

10:35:41 12 Why did Rachel purchase the Swann system, if
10:35:53 13 you know?

10:35:53 14 A. There are two reasons. For home
10:35:56 15 security, and it was on sale \$200 off.

10:36:11 16 Q. Does the Swann system allow someone to
10:36:16 17 access video footage without preserving the
10:36:19 18 footage?

10:36:22 19 A. Say that again.

10:36:24 20 Q. Sure. Let me rephrase it slightly.
10:36:26 21 Using the system, are you able to view
10:36:29 22 footage without preserving it?

10:36:35 23 A. I don't know. You mean, can I --

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10:36:41 1 I don't know.

10:36:42 2 Q. Have you ever gone onto the system,
10:36:46 3 accessed footage from a period of time, and not
10:36:55 4 saved that footage?

10:37:05 5 A. We -- either Rachel or I -- Earl even
10:37:09 6 used it in January, he looked at it. We look at it
10:37:13 7 almost every day. I mean, if there's something --
10:37:16 8 it's kind of like the window on the world outside.

10:37:25 9 If you're missing a garbage can, you can go
10:37:28 10 back and find out what happened to the trash can.
10:37:30 11 Where did the trash can go?

10:37:35 12 If Charlie lost his ball in the backyard,
10:37:37 13 you can look: Where did Charlie's ball go?

10:37:44 14 We use it in that sense to look at what has
10:37:47 15 happened to try to understand.

10:37:54 16 Have we ever used it to look back and not
10:37:57 17 preserved it? I think to preserve it -- it's still
10:38:00 18 beyond me. I've still got to call somebody in and
10:38:03 19 say, get this off of here. I want to keep it
10:38:05 20 forever.

10:38:05 21 Q. Is it your understanding, based on your
10:38:09 22 experience with the Swann system, that you have the
10:38:11 23 ability to access video, and preserving it is

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10:38:14 1 something separate?

10:38:16 2 A. I don't know what its abilities are.

10:38:19 3 I don't know. We just -- we use it for what we use
10:38:22 4 it for.

10:38:23 5 I'm sure it will do all kind of things if
10:38:26 6 you're smart enough to sit there and study the
10:38:29 7 book. I don't even know if I've got the book
10:38:31 8 anymore.

10:38:38 9 Q. In January of 2017, who had access to
10:38:42 10 the footage on the Swann system DVR?

10:38:46 11 A. Just Rachel and I. But Earl, he was
10:38:50 12 there that morning, and when I was in the police
10:38:54 13 car and he came back in the house, while Rachel was
10:38:57 14 at the front window, Earl went -- because he's
10:39:02 15 smart enough to figure out how to play and rewind,
10:39:05 16 which is about all I ever showed him, because I
10:39:10 17 don't know any more about it -- he looked at it.
10:39:13 18 So Earl looked at it.

10:39:15 19 Other than Earl looking at it that day --
10:39:18 20 oh, and Earl showed it to Jim Ostrowski that
10:39:22 21 morning. So that's at least twice that Earl
10:39:25 22 rewound it on that morning and looked at it.

10:39:26 23 Q. How did you come to learn that?

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10:39:28 1 A. That Earl had looked at it?

10:39:31 2 Q. Yes.

10:39:32 3 A. I talk to my son as much as I can.

10:39:44 4 Q. Prior to having Gary retrieve footage
10:39:52 5 from January 1st, 2017, had you viewed footage from
10:39:57 6 that date?

10:40:02 7 A. Yeah. I think I looked at it as soon
10:40:04 8 as I got home that day.

10:40:07 9 Q. What is Gary's full name?

10:40:13 10 A. I don't remember.

10:40:17 11 Q. How did you contact Gary to make
10:40:19 12 arrangements for him to retrieve the video?

10:40:21 13 A. A refrigerator magnet.

10:40:23 14 Q. Do you still have that magnet?

10:40:25 15 A. No. I gave it to Jill. I think Jill's
10:40:29 16 got it. I think I sent it to her in the mail.

10:40:37 17 Q. Have you had any contact with Gary
10:40:39 18 since his retrieval of the video off the system?

10:40:51 19 A. Well, he dropped it off and I paid him.
10:40:59 20 I might have talked to him on the phone over the
10:41:01 21 last several years twice, but I can't remember what
10:41:04 22 we talked about.

10:41:08 23 Q. Any time that you communicated with

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10:41:11 1 him, was it through whatever contact information
10:41:13 2 was on that fridge magnet?

10:41:15 3 A. Yeah, it would have had to have been.

10:41:19 4 Oh, and I think he's a friend of mine on
10:41:21 5 Facebook, but I don't -- I don't communicate with
10:41:24 6 him at all on Facebook, other than read his stuff
10:41:27 7 and he reads stuff that I repost.

10:41:32 8 Q. Had Gary ever retrieved video footage
10:41:36 9 for you prior to --

10:41:37 10 A. No.

10:41:37 11 Q. -- January 1st, 2017?

10:41:40 12 Did you give Gary any instructions on what
10:41:48 13 footage you wanted retrieved?

10:41:50 14 A. Yeah.

10:41:51 15 Q. What instructions did you give him?

10:41:53 16 A. I told him Jim -- Mr. Ostrowski --
10:41:56 17 I said, Jim Ostrowski -- Jim wants everything on
10:42:00 18 the front of the house that shows the incident from
10:42:02 19 the time the tenant arrives, until the time the
10:42:08 20 police leave.

10:42:15 21 Q. Do you know if that footage was
10:42:18 22 preserved from the time the tenant arrived and the
10:42:22 23 police leaving?

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10:42:31 1 A. I think so. Yeah, I think so.

10:42:34 2 Q. Are you aware of any footage aside from
10:42:39 3 the first clip that you've mentioned earlier in
10:42:43 4 your testimony?

10:42:49 5 A. From those two cameras, the one on the
10:42:52 6 left that looks straight down, that shows the
10:42:58 7 police with Earl.

10:43:05 8 Q. Was that footage also retrieved off the
10:43:07 9 system, if you are aware?

10:43:10 10 A. Yeah, both of those views.

10:43:14 11 Q. Is it your understanding that the
10:43:15 12 entire footage captured by both of those cameras
10:43:19 13 from the time that the tenant arrived and when the
10:43:22 14 police left on January 1st, 2017, was preserved?

10:43:35 15 A. I think it was.

10:43:40 16 Can I articulate here? I think I can help
10:43:43 17 answer your question here.

10:43:45 18 Q. Let me ask more broadly.

10:43:47 19 A. Okay.

10:43:48 20 Q. Are you aware of any footage that
10:43:51 21 exists from that date that was not retrieved off
10:43:54 22 of your Swann system?

10:43:55 23 A. That's more to the point. I know that

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10:43:59 1 there was video footage after the police left of
10:44:03 2 Jim Ostrowski arriving and Jim Ostrowski leaving,
10:44:10 3 but I don't know where it is.

10:44:12 4 I have looked and looked and looked, and
10:44:14 5 I am still looking, but I know I saw that on video,
10:44:20 6 and I can't find it anywhere.

10:44:26 7 Q. Are you aware of any footage -- strike
10:44:38 8 that.

10:44:38 9 From the time that your tenant arrives on
10:44:41 10 Schmarbeck, until the time that the police leave,
10:44:44 11 are you aware of any footage that is no longer
10:44:48 12 available from that period of time?

10:44:59 13 A. That's a no with an explanation or
10:45:03 14 a yes with an explanation.

10:45:07 15 When Gary came back with the stuff on the
10:45:15 16 disc, he had it on four discs. All the discs were
10:45:20 17 just copies of each other, he told me.

10:45:25 18 And when I -- when I first was able to get
10:45:28 19 those discs to work and actually look at them,
10:45:30 20 there were like clips on there. It wasn't one long
10:45:34 21 movie. It wasn't one long, uninterrupted movie.
10:45:40 22 It was just this clip and then there was another
10:45:42 23 clip and then there was another clip and then there

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10:45:46 1 was another clip.

10:45:51 2 That's what I'm aware. The clips and the
10:45:54 3 time at the top -- the time at the top looks
10:45:57 4 different.

10:45:57 5 Q. Are you aware of any footage from that
10:46:01 6 date and incident that is continuous and extends
10:46:05 7 for the entire period of time from when the tenant
10:46:08 8 arrived and the police left?

10:46:09 9 A. Okay. I don't think there is one.

10:46:12 10 The reason I say that is because when
10:46:16 11 I asked Gary, the video guy, about is there one
10:46:21 12 long one here, he told me, when he was delivering
10:46:24 13 the thing and picking up his pay, that that video
10:46:29 14 clip was so big, that the only way he could get it
10:46:33 15 off the machine and onto DVD was to make it smaller.

10:46:39 16 Like the two hours from beginning to end or
10:46:42 17 whatever time there was there, it was just too big
10:46:44 18 a clip, and he didn't know how to move it around,
10:46:47 19 other than to do it the way he did it.

10:46:50 20 Q. Are you aware if the continuous footage
10:46:54 21 from this incident was preserved in any way aside
10:46:58 22 from --

10:46:58 23 A. No, I'm not.

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10:47:00 1 Q. -- reducing to a disc?

10:47:02 2 A. No.

10:47:02 3 Q. Do you have access to that continuous
10:47:04 4 footage today?

10:47:06 5 A. No. If I find it, you'll be the first
10:47:10 6 to get it.

10:47:11 7 Q. Do you have access to the same Swann
10:47:15 8 DVR system that was in place and recording footage
10:47:19 9 on January 1st, 2017?

10:47:22 10 A. Yeah.

10:47:23 11 Q. Is that Swann DVR system still
10:47:27 12 functioning?

10:47:28 13 A. Yeah. One of the cameras doesn't work.
10:47:32 14 We lost a view.

10:47:34 15 Q. Which camera?

10:47:40 16 A. The one on the front porch, looking to
10:47:43 17 the right. It just stopped working a couple months
10:47:45 18 ago.

10:47:45 19 Q. Do you know when it stopped working?

10:47:47 20 A. Yeah. A couple months ago. I think
10:47:49 21 it's got a short in the wire going to the camera.

10:47:51 22 Q. In the year 2019?

10:47:53 23 A. Oh, yeah. Yes.

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10:47:54 1 Q. Had you ever performed any maintenance
10:47:56 2 on either the DVR system or the cameras itself?

10:47:59 3 A. No.

10:48:11 4 Q. After -- strike that.

10:48:14 5 In order for Gary to retrieve the footage,
10:48:18 6 did you have to physically give him the DVR system?

10:48:21 7 A. Yeah.

10:48:22 8 Q. And that system at some point was later
10:48:24 9 returned to you by Gary?

10:48:25 10 A. Yeah.

10:48:26 11 Q. Were you present at any point when Gary
10:48:29 12 was retrieving or preserving video footage from
10:48:34 13 January 1st, 2017?

10:48:35 14 A. No.

10:48:39 15 Q. Did you view any of the footage from
10:48:42 16 January 1st, 2017, on the DVR system, after it was
10:48:47 17 returned to you by Gary?

10:49:00 18 A. I don't know.

10:49:00 19 Q. Prior to giving Gary the DVR system,
10:49:03 20 had you viewed the January 1st, 2017 footage from
10:49:08 21 the time that your tenant arrived, until when the
10:49:10 22 police left Schmarbeck Avenue?

10:49:21 23 A. I want to say yes, but I don't think

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10:49:25 1 I looked at it like all the way through, nonstop.

10:49:34 2 I, Rachel, and Earl together looked at it
10:49:42 3 the biggest part of half the day the next day.

10:49:47 4 Q. At some point you became aware that
10:49:52 5 footage was captured from the time your tenant
10:49:55 6 arrived, to when police --

10:49:57 7 A. Yeah.

10:49:58 8 Q. -- left the street.

10:50:00 9 A. Yeah.

10:50:00 10 Q. Okay. Have you ever created any notes,
10:50:05 11 a log, a diary of any sort to reduce to writing
10:50:09 12 what happened on January 1st, 2017?

10:50:14 13 A. Not a diary.

10:50:17 14 Q. What form have you taken notes in?

10:50:19 15 A. I tried to sit and look at the four
10:50:22 16 clips and tried to figure out what order they go in
10:50:30 17 and tried to figure out like how long this whole
10:50:35 18 thing -- how long this whole thing took to happen
10:50:38 19 to try to make some sense of how long from the time
10:50:45 20 he got there, until the time the last police car
10:50:48 21 left, and why did the police leave when they did,
10:50:56 22 and tried to make sense of that.

10:51:01 23 Q. Did you reduce any of that to writing,

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10:51:03 1 either handwritten or typed?

10:51:05 2 A. It was more that I was just keeping
10:51:07 3 notes on the number of the clock, so it -- no.
10:51:12 4 It wasn't the kind of thing you could understand.
10:51:15 5 I didn't save it.

10:51:20 6 Q. Have you created any notes, a log,
10:51:22 7 a diary to help memorialize any injuries you allege
10:51:26 8 that you suffered from the January 1st, 2017
10:51:28 9 incident?

10:51:35 10 A. No.

10:51:38 11 Q. Sir, how old are you today?

10:51:41 12 A. 59.

10:51:46 13 Q. What is your current height and weight?

10:51:51 14 A. 250, five eleven.

10:51:56 15 Q. What was your approximate height and
10:51:59 16 weight on January 1st, 2017?

10:52:05 17 A. 220, five eleven.

10:52:13 18 Q. Have you been prescribed any contacts
10:52:15 19 or glasses since your 50-h testimony in June of
10:52:18 20 2017?

10:52:20 21 A. No.

10:52:28 22 Q. Do you have any hearing problems?

10:52:40 23 A. Maybe.

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10:52:40 1 Q. Since your testimony in your 50-h in
10:52:44 2 June of 2017, have you seen any medical provider
10:52:47 3 for any hearing-related issue?

10:52:50 4 A. No.

10:52:51 5 Q. When you say maybe, what do you mean by
10:52:53 6 that?

10:52:55 7 A. If there's a crowd, if there's a lot of
10:52:58 8 noise, there's a lot of background noise, it's real
10:53:00 9 hard to pick up from the distance of five feet what
10:53:06 10 somebody's saying unless you watch their mouth.

10:53:08 11 Q. Have you ever seen a medical provider
10:53:11 12 at all with regard to that issue?

10:53:18 13 A. No.

10:53:19 14 Q. Do you utilize anything to aid your
10:53:23 15 hearing in those types of situations?

10:53:28 16 A. Rachel bought me two of them \$20
10:53:33 17 hearing aids, one for each ear, and -- but that was
10:53:41 18 more a here, I told you so, wear these, than it was
10:53:45 19 a physician telling me that I couldn't hear.

10:53:49 20 Q. When did she buy those for you?

10:53:53 21 A. Last year.

10:53:56 22 Q. Were you wearing any type of aid on
10:54:00 23 January 1st, 2017?

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10:54:05 1

A. No.

10:54:12 2

Q. You mentioned earlier that you are

10:54:14 3

married to Rachel?

10:54:15 4

A. No, I'm not. We're not married.

10:54:17 5

Q. Okay. What did you mean by that when

10:54:19 6

you said earlier today that you were married to

10:54:21 7

her?

10:54:24 8

MR. DAVENPORT: I don't think that he said

10:54:25 9

that he was married to her.

10:54:26 10

THE WITNESS: I think I clarified that we're

10:54:28 11

not married earlier today.

10:54:29 12

BY MS. HUGGINS:

10:54:29 13

Q. Okay. Who is Rachel to you then?

10:54:35 14

A. We have three children in common.

10:54:39 15

Q. Have you ever been married before?

10:54:41 16

A. Yes.

10:54:42 17

Q. When did you first get married?

10:54:56 18

A. '90.

10:54:58 19

Q. Who did you marry?

10:54:59 20

A. Danielle Bradley.

10:55:06 21

Q. Are you still married to Ms. Bradley?

10:55:08 22

A. No.

10:55:09 23

Q. When did you get divorced?

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10:55:13 1 A. We had a jury trial on our divorce in
10:55:17 2 front of Lane in Niagara County in 2000.

10:55:23 3 Q. Do you have any children in common with
10:55:25 4 Ms. Bradley?

10:55:26 5 A. Three.

10:55:28 6 Q. Which of your children are your
10:55:32 7 children in common with Ms. Bradley?

10:55:35 8 A. Joelle, Laurel, and Earl.

10:55:41 9 Q. Do you still have any contact with
10:55:43 10 Ms. Bradley?

10:55:48 11 A. Once a year maybe she'll call and want
10:55:52 12 to know where Earl is, but no, we don't talk.

10:55:55 13 Q. Have you ever discussed the
10:55:56 14 January 1st, 2017 incident with Ms. Bradley?

10:56:00 15 A. I haven't.

10:56:07 16 Q. How many children in total do you have,
10:56:09 17 sir?

10:56:10 18 A. Seven.

10:56:18 19 Q. Your middle child -- forgive me.
10:56:22 20 I forget your middle child's name. We discussed
10:56:35 21 Joelle, Laurel, and Earl. Who is your next?

10:56:38 22 A. Kendall.

10:56:39 23 Q. Kendall.

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10:56:40 1 A. Yeah. I have four big ones and three
10:56:42 2 little ones.

10:56:43 3 Q. Who is the mother of Kendall?

10:56:48 4 A. I want to make sure I get her last
10:56:50 5 name. I think her name is still Barber. Lisa
10:56:57 6 Barber.

10:56:58 7 Q. Do you have any contact with
10:56:59 8 Ms. Barber?

10:57:03 9 A. Not in six or seven years.

10:57:06 10 Q. Ever discuss this January 1st --

10:57:09 11 A. No.

10:57:10 12 Q. -- incident with her? Okay.
10:57:12 13 Were any of your children residing with you
10:57:14 14 on January 1st, 2017?

10:57:22 15 A. The three little ones were at Rachel's
10:57:25 16 house at 37, next door. I'm sleeping and staying
10:57:29 17 over at 33, which is the house I own. Earl was
10:57:32 18 home. I can't remember whether he -- I know he had
10:57:39 19 to sleep over at Rachel's on the first floor at 37,
10:57:42 20 so Earl was staying with Rachel that night. I got
10:57:48 21 up early and came over.

10:57:55 22 Almost -- almost constantly since this,
10:57:58 23 though, I've been spending almost all of the time

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10:58:00 1 over at Rachel's because she still worries.

10:58:05 2 Q. When did you stop residing at 33 and
10:58:09 3 staying at 37?

10:58:10 4 A. Consistently?

10:58:11 5 Q. Consistently.

10:58:17 6 A. I don't know. Eight months ago.
10:58:19 7 A year ago.

10:58:27 8 Q. What caused that change in staying at
10:58:30 9 33 to then consistently staying --

10:58:32 10 A. Rachel's mental health.

10:58:59 11 Q. -- at 37?

10:58:59 12 Where were Laurel, Joelle, and Kendall
10:59:03 13 living in January of 2017?

10:59:16 14 A. I don't know. I don't remember.

10:59:17 15 Q. Were they residing in the Buffalo area?

10:59:26 16 A. I want to say Joelle was, but I think
10:59:30 17 the other two were out of town.

10:59:33 18 Q. Did you ever discuss the January 1st,
10:59:36 19 2017 incident with Laurel, Joelle, or Kendall?

10:59:40 20 A. No.

10:59:57 21 Q. What properties, if any, do you own on
11:00:01 22 Schmarbeck Avenue?

11:00:02 23 A. 24, 29, and 33.

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11:00:09 1 Q. What type of property is 24 Schmarbeck?

11:00:11 2 A. 24 is a double. A traditional 30 by 110.

11:00:17 3 Q. When you say double, is it like

11:00:19 4 a lower, upper double?

11:00:21 5 A. Yeah.

11:00:24 6 Q. How long have you owned 24 Schmarbeck?

11:00:32 7 A. I'm guessing to say 2007, but I think

11:00:34 8 that's kind of accurate.

11:00:37 9 Q. What type of property is 29 Schmarbeck?

11:00:40 10 A. It's an empty lot.

11:00:44 11 Q. Has it always been an empty lot while

11:00:47 12 you have owned it?

11:00:48 13 A. Yeah.

11:00:48 14 Q. And what type of residence -- not

11:00:50 15 residence -- what type of property is 33 Schmarbeck?

11:00:54 16 A. It's a single-family home. It's got --

11:01:00 17 it's got an office in the back, and it's got --

11:01:10 18 it's got a finished attic and a two bedroom on the

11:01:14 19 first floor, which if I get rid of the office,

11:01:17 20 I can make a three bedroom on the first floor. So

11:01:20 21 it's essentially a double.

11:01:21 22 Q. Are those rooms that you have described

11:01:23 23 separate units?

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11:01:26 1 A. They have been since I got it.

11:01:37 2 Q. What sources of income did you have in
11:01:38 3 January of 2017?

11:01:47 4 A. Two apartment rents -- no. Three
11:01:50 5 apartment rents. Three apartment rents. I've got
11:01:53 6 one of Rachel's apartment rents and then the two --
11:01:59 7 the two rooms I had rented, so there were three
11:02:01 8 sources.

11:02:02 9 It's not that way anymore but that's what it
11:02:04 10 was then.

11:02:05 11 Q. The three units that you have described,
11:02:11 12 does that encompass 24 and 33 Schmarbeck?

11:02:15 13 A. No. That would be the two at 33 and
11:02:20 14 one of Rachel's units at 41.

11:02:24 15 Q. Was 24 Schmarbeck empty?

11:02:28 16 A. 24 has been a project since the day we
11:02:32 17 got it. Other things are constantly calling me off
11:02:38 18 of it, and then I've got to go back to it, and
11:02:43 19 then --

11:02:46 20 Q. The unit that Rachel owns at
11:02:47 21 41 Schmarbeck --

11:02:49 22 A. Yeah.

11:02:50 23 Q. -- did you ever reside at 41 Schmarbeck?

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11:02:52 1 A. Yeah.

11:02:52 2 Q. When did you reside there?

11:02:54 3 A. When Rachel got the first building

11:02:57 4 there, we were still undergrads. Rachel and

11:03:01 5 I lived together there, and then on the weekends,

11:03:04 6 the three older kids would come over. They were

11:03:07 7 like eight, nine, and 12. So -- I don't know

11:03:17 8 how -- that was 20 years ago.

11:03:21 9 We did live there I think for six years.

11:03:27 10 Maybe seven.

11:03:28 11 Q. Some time ago, though?

11:03:29 12 A. Oh, yeah. It's a long, long time ago.

11:03:31 13 Q. What type of building is 41 Schmarbeck?

11:03:34 14 A. 41 is identical to 24. They're like

11:03:39 15 mirror images of each other. They're just across

11:03:41 16 the street. It's a traditional Buffalo double.

11:03:46 17 Four bedrooms on the first floor, three bedrooms on

11:03:49 18 the second floor.

11:03:50 19 Q. With the two units being an upper and
11:03:52 20 a lower?

11:03:52 21 A. Yeah. And if you finish the attic,
11:03:55 22 that's another 900 square feet.

11:03:58 23 Q. Aside from the rent that you

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11:04:00 1 were collecting from the two units in 33 and
11:04:03 2 41 Schmarbeck, did you have any other sources
11:04:05 3 of income in January of 2017?

11:04:11 4 A. No.

11:04:11 5 Q. Were you doing anything else for work
11:04:12 6 to help support yourself at that time?

11:04:15 7 A. No.

11:04:18 8 Q. How much rent did you charge for the
11:04:22 9 units at 33 Schmarbeck?

11:04:35 10 A. I'm going to give you an answer. It's
11:04:40 11 not gospel. Don't hold me to it. But I can tell
11:04:43 12 you approximately 405 on the second floor, 525 on
11:04:50 13 the first floor, and Rachel's unit at 41 upstairs
11:04:57 14 was 555. So add those together and that was my
11:05:03 15 monthly income. Gross.

11:05:09 16 Q. Was there anything about the January 1st,
11:05:12 17 2017 incident that prevented you from collecting
11:05:15 18 those rents?

11:05:27 19 A. Can you ask that again?

11:05:28 20 Q. Let me ask it a different way.

11:05:31 21 In other words, did the January 1st, 2017
11:05:33 22 incident cause you to lose any rental income?

11:05:47 23 A. No.

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11:05:48 1 Q. What paperwork, if any, do you keep
11:05:51 2 regarding the tenants that rent from you?

11:06:07 3 A. Can you explain that? Can you be more
11:06:09 4 specific with that question?

11:06:10 5 Q. Sure.

11:06:11 6 Did you keep any records on the tenants that
11:06:14 7 rented from you?

11:06:22 8 A. Okay. The best way to answer that is
11:06:26 9 I don't have a file cabinet. I have boxes, and
11:06:30 10 I just put the papers in the boxes.

11:06:36 11 As the kids came along, as the three boys
11:06:39 12 came into our lives, you have to shed yourself of
11:06:42 13 that stuff, so you're constantly taking a box,
11:06:46 14 going through it, and going: Well, I haven't had
11:06:48 15 this lady for a tenant for eight years. That goes
11:06:51 16 in the garbage.

11:06:53 17 That's how I can describe my record keeping.

11:06:56 18 Q. Sure.

11:06:57 19 Did you have prospective tenants or tenants
11:07:00 20 that did indeed rent from you fill out an
11:07:03 21 application prior to them taking over a unit?

11:07:05 22 A. Yeah.

11:07:05 23 Q. Did you run background checks on your

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11:07:08 1 tenants?

11:07:09 2 A. No. Can't afford to.

11:07:16 3 Q. Who was the tenant or tenants living at
11:07:18 4 33 Schmarbeck on January 1st, 2017?

11:07:25 5 A. At 33? 33 Schmarbeck?

11:07:27 6 Q. 33.

11:07:28 7 A. Mike Wolfe was on the first floor.

11:07:29 8 Q. How long had Mike Wolfe rented from you
11:07:33 9 by January 1st, 2017?

11:07:40 10 A. I want to say he'd been there a year.

11:07:45 11 Q. Did you know Mike Wolfe prior to him
11:07:47 12 becoming a tenant of yours?

11:07:49 13 A. No.

11:07:55 14 Q. Did Mike Wolfe fill out an application
11:07:57 15 for the unit?

11:07:58 16 A. Yeah.

11:07:58 17 Q. Did you have any issues with Mike Wolfe
11:08:01 18 when he was your tenant at 33 Schmarbeck?

11:08:09 19 A. No. Close to the end, maybe a little,
11:08:11 20 but no.

11:08:11 21 He was a Restoration Society referral. We
11:08:15 22 got him through the Restoration Society. At that
11:08:18 23 point, we were getting a lot of people through the

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11:08:21 1 Restoration Society.

11:08:22 2 Q. How does the Restoration Society -- or
11:08:25 3 how did the Restoration Society refer a tenant to
11:08:29 4 you in January of 2017?

11:08:31 5 A. Here's the best way I can describe my
11:08:34 6 understanding of how that happened: When we listed
11:08:38 7 something, we never list anywhere except on
11:08:42 8 craigslist because it's free and most people know
11:08:45 9 how to use it. They can navigate it.

11:08:47 10 Restoration Society has a clubhouse
11:08:50 11 somewhere in Buffalo where homeless people and
11:08:52 12 their clients can go and use a computer to look for
11:08:57 13 apartments. I'm pretty sure that's how Mike found
11:09:06 14 out about us.

11:09:09 15 And I know he came with Restoration. He
11:09:12 16 came with -- when he initially established his
11:09:17 17 tenancy with us, he came with a counselor. And we
11:09:26 18 became pretty familiar with the counselors, but the
11:09:32 19 counselors come and go pretty quick there too, so --

11:09:38 20 Q. When did Mike Wolfe move out of the
11:09:42 21 unit at 33?

11:09:57 22 A. Sometime between January 1st, 2017 and
11:10:02 23 January 3rd, 2017.

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11:10:05 1 Q. Is there anything about the incident
11:10:07 2 occurring involving the Buffalo Police Department
11:10:11 3 on January 1st, 2017, that caused Mike Wolfe to
11:10:16 4 move out of that unit, if you are aware?

11:10:28 5 THE WITNESS: No. This begs some
11:10:36 6 explanation here.

11:10:37 7 MR. DAVENPORT: Go for it.

11:10:41 8 BY MS. HUGGINS:

11:10:41 9 Q. Let me ask a more general question.
11:10:43 10 Why did Mike Wolfe's tenancy with you come to an
11:10:48 11 end?

11:10:54 12 A. That begs an explanation too.

11:10:56 13 Q. It's an open-ended question.

11:10:57 14 A. All right. All right. Mike was a --
11:11:06 15 he was a substance abuser who had mental health
11:11:12 16 issues. His first few months of tenancy, first
11:11:14 17 five or six or seven months of tenancy were pretty
11:11:17 18 quiet.

11:11:18 19 He had his son or the guy who represented as
11:11:21 20 his son, he would come over and stay with him
11:11:24 21 periodically. That wasn't an issue.

11:11:26 22 About November, we started seeing a fellow
11:11:31 23 come and he'd stay there for days. And part of --

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11:11:36 1 part of this tenancy is we pay gas, we pay
11:11:41 2 electric, we give you a washer, stove, dryer
11:11:44 3 fridge. We pay for everything. Give you free
11:11:46 4 internet. Everything.

11:11:49 5 If you have another adult move into the
11:11:51 6 unit, you've got -- they've got to get an
11:11:54 7 application filled out, they have to be approved,
11:11:58 8 and you've got to kick in another hundred bucks
11:12:01 9 a month.

11:12:02 10 I'm allowed to do that because I pay for
11:12:05 11 everything. The water bill goes up. The electric
11:12:07 12 goes up. Wear and tear on the unit goes up. But
11:12:15 13 we don't expect more of a deposit.

11:12:17 14 So I told Mike: What's up with this guy?
11:12:20 15 Who is he? Where is he coming from? You know,
11:12:23 16 because it looks like to me, Mike, that he's living
11:12:26 17 with you. He said, no. He's just coming around.

11:12:30 18 Well, then it became apparent they were
11:12:32 19 using together, abusing drugs together. And
11:12:36 20 I said, well, you know, you've got a subsidized
11:12:42 21 apartment. Restoration is paying for this. Are
11:12:47 22 you letting Restoration know that this guy's over
11:12:50 23 here? Because I will if you won't.

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11:12:55 1 By the first week of December, the tenancy
11:13:00 2 had -- it was circling the drain.

11:13:04 3 Q. You've mentioned November and December.
11:13:06 4 This is in the year 2017?

11:13:08 5 A. '16.

11:13:09 6 Q. Oh, I'm sorry. 2016?

11:13:11 7 A. '16.

11:13:12 8 Q. Yeah.

11:13:14 9 A. The month immediately before.

11:13:15 10 Q. Right.

11:13:18 11 A. About the -- I'm going to say the 15th
11:13:21 12 or 16th of December, they disappeared. They were
11:13:24 13 just gone. And I thought: Wow. I didn't even
11:13:31 14 have to put a pay or quit or anything or a 90-day
11:13:35 15 or a 30-day notice on the door. They just
11:13:37 16 disappeared. Good for me.

11:13:39 17 And then -- but he didn't turn in the keys,
11:13:44 18 and I'd call him on the phone and say, are you done
11:13:51 19 over there yet? You know, are you done with the
11:13:52 20 apartment? Are you moved out? That might have
11:13:54 21 happened twice that I called him, and he said no.

11:13:57 22 Well, then when he just disappeared -- and
11:14:01 23 I've had tenants do that too. They just walk away

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11:14:04 1 or they get arrested and you never hear from them.

11:14:09 2 He was gone for about a week, so I started, you

11:14:13 3 know, asking people that lived on the street:

11:14:15 4 Anybody know where Mike is?

11:14:17 5 And somebody told me they're over at the

11:14:26 6 Little Shepherd of the Poor. Some social service

11:14:28 7 agency. I don't know if I got the name right. And

11:14:30 8 I said, what are they doing over there? And the

11:14:34 9 guy that had been over there in the daytime and saw

11:14:37 10 Mike over there said, they're getting the Christmas

11:14:40 11 goodies. So I said, oh.

11:14:44 12 So I called up Little Shepherd and I said,

11:14:47 13 is Mike Wolfe there? And they said, who is this?

11:14:50 14 And I told them: This is his landlord over here on

11:14:55 15 Schmarbeck, and I'm -- is he staying with you guys?

11:14:58 16 Has he moved in with you guys? Because they house

11:15:01 17 them overnight there. And they said, yeah.

11:15:04 18 And I said, well, are you aware that he's

11:15:07 19 got a subsidized apartment over here on Schmarbeck?

11:15:10 20 And he said, no. And he said, who's it subsidized

11:15:14 21 through? I said, Restoration. So they said, well,

11:15:18 22 could you have Restoration call us? And I said,

11:15:20 23 I don't want to get in the middle here. Why don't

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11:15:23 1 you call Restoration. And he said, yeah, we all
11:15:26 2 got to get together and figure this out. And I said,
11:15:29 3 well, are you going to keep him? Is he moved in
11:15:32 4 permanently?

11:15:33 5 Because if you can't talk to the tenant, you
11:15:35 6 have to figure out what's going on with the
11:15:37 7 building somehow.

11:15:41 8 And he said, well, we need to get on the
11:15:43 9 same page with Restoration. We need to find out
11:15:46 10 what's going on.

11:15:48 11 Q. Was there ultimately any conversation
11:15:50 12 with Mike about this?

11:15:53 13 A. No. No. He called me back, and he
11:15:58 14 said, they have -- he's over here with a friend,
11:16:02 15 which we kind of deduced was the fellow he had
11:16:05 16 staying at the apartment with him on and off, that
11:16:11 17 were drug abusing together.

11:16:18 18 And I think it was around the 28th I talked
11:16:22 19 to them. It was just after Christmas. And I says,
11:16:25 20 is he going to stay there with you? And they said,
11:16:28 21 well, he's got one more night. He's able to stay
11:16:33 22 here for ten days. And under the circumstances, we
11:16:37 23 wish you had called us earlier and we would have

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11:16:39 1 told him go home to Schmarbeck because we needed
11:16:42 2 the bed.

11:16:43 3 And I said, well, I just wanted to know
11:16:45 4 whether he had permanent housing, he's got
11:16:47 5 something else. Because it's always easier, if the
11:16:49 6 tenancy is going south, to make sure somebody has
11:16:52 7 a place to land, because they'll go out a whole lot
11:16:55 8 easier if they've got somewhere to go.

11:16:57 9 And like I said, we've dealt with a lot of
11:16:59 10 people in that situation before. A lot of our
11:17:01 11 tenants are problematic.

11:17:02 12 Q. Did you ever initiate any housing court
11:17:04 13 or other legal proceedings involving Mike?

11:17:07 14 A. I don't know if I mailed it and nailed
11:17:13 15 it. I think Earl might have nailed and mailed it
11:17:17 16 for me on the 30th. Because Earl doesn't have
11:17:21 17 a physical interest in 33, he's able to be
11:17:26 18 a process server.

11:17:27 19 I can't do my own process serving on my own
11:17:30 20 buildings. I've got to get somebody to do it. And
11:17:32 21 I'd prefer to get somebody that I don't have to
11:17:34 22 pay.

11:17:34 23 Q. What service -- what process did you

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11:17:38 1 serve on Mike?

11:17:38 2 A. Well, I know we nailed on the door. We
11:17:41 3 gave him a 30-day notice.

11:17:44 4 Q. Of eviction?

11:17:45 5 A. Yeah. Which is what you have to do to
11:17:46 6 start the process, I think.

11:17:48 7 Q. Did you do any other legal proceedings
11:17:51 8 involving Mike and the unit at 33?

11:18:01 9 A. No.

11:18:01 10 Q. Did you ever call the police with
11:18:02 11 regard to any issues with Mike at 33?

11:18:06 12 A. I don't remember.

11:18:21 13 Q. Did you ever come to learn the identity
11:18:23 14 of the person who was staying with Mike?

11:18:26 15 A. No. Not -- I might have known for
11:18:31 16 a second or thought I knew for a second but not
11:18:33 17 now.

11:18:33 18 Q. Did Mike ever discuss with you any
11:18:36 19 issues he had with the person staying with him
11:18:39 20 at 33?

11:18:50 21 A. I don't want to trash anybody too bad,
11:18:51 22 but Mike was always -- always had something that he
11:18:54 23 wanted you to listen to. Mike always had some

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11:18:57 1 story.

11:19:03 2 Q. Did he ever request that you help
11:19:05 3 remove that person from 33?

11:19:08 4 A. If he did, I know exactly what I would
11:19:10 5 have told him, but I don't remember him doing that,
11:19:13 6 no.

11:19:27 7 Q. Do you have any contact with Mike Wolfe
11:19:30 8 presently?

11:19:32 9 A. No.

11:19:34 10 Q. When was your last contact with Mike
11:19:42 11 Wolfe?

11:19:42 12 A. During one of my court appearances in
11:19:46 13 City Court on these criminal charges around this
11:19:57 14 false arrest, I was in the hallway, and Mike Wolfe
11:20:01 15 walked into the large area up in the criminal court
11:20:07 16 city building over there, and I noticed him, but he
11:20:12 17 didn't notice me.

11:20:14 18 Within about 15 minutes he walked into
11:20:18 19 a court room on that floor. My case hadn't been
11:20:23 20 called yet, so I went in and listened and saw that
11:20:28 21 Mike was involved in -- he was in a raid at a crack
11:20:31 22 house and had been swept up in a raid.

11:20:34 23 This was three or four or five months later,

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11:20:40 1 after January, so it would have been around June or
11:20:42 2 July. Something like that.

11:20:46 3 And after I learned that, I went back and
11:20:48 4 sat in the hallway for my case to get called, and
11:20:50 5 Mike came out of the court room after his case was
11:20:53 6 called, and he walked over and said hello. And
11:20:56 7 I really was kind of shy to talk to him, and I just
11:21:00 8 kind of acknowledged that he was standing there.

11:21:05 9 And he said, do you have something going on
11:21:08 10 here? And I was real vague and said, there's
11:21:13 11 always something going on in this building, Mike.
11:21:16 12 He just kind of laughed.

11:21:19 13 But that was the last time I laid eyes on
11:21:21 14 Mike Wolfe.

11:21:22 15 Q. Have you ever discussed the
11:21:24 16 January 1st, 2017 incident with the Buffalo
11:21:27 17 Police Department with Mike?

11:21:29 18 A. No.

11:21:31 19 Q. Are you aware if Mike witnessed any
11:21:34 20 portion of your interaction with the Buffalo police
11:21:38 21 officers on January 1st, 2017?

11:21:54 22 A. No, but they're going to inform you
11:21:57 23 of -- because the way I answer this might infer

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11:21:59 1 that he did.

11:22:02 2 When I was not home -- during that January
11:22:08 3 1st, 2017 time, when I wasn't at home, Rachel got
11:22:14 4 30 calls from him on his cell phone. Rachel said,
11:22:20 5 he's been calling here -- when I got home that day,
11:22:23 6 she said, he's been calling here all day.

11:22:25 7 Q. Did she actually speak with him?

11:22:27 8 A. No. Rachel was smart enough to not --
11:22:30 9 just not answer the phone, or I can't talk now.

11:22:37 10 Because Rachel being home alone, if Mike
11:22:40 11 knew I wasn't there, could have been problematic.
11:22:46 12 If Mike and his drug-abusing friend were over
11:22:49 13 there, knowing that Rachel was home alone with
11:22:51 14 three kids, that could have become problematic for
11:22:55 15 her.

11:22:55 16 Q. So other than him, Mike, repeatedly
11:22:57 17 calling Rachel that day, do you have any other
11:22:59 18 basis for thinking that maybe Mike saw any of your
11:23:02 19 interaction with the officers --

11:23:04 20 A. No.

11:23:05 21 Q. -- on January 1st?

11:23:07 22 A. No. He was not to talk to me about
11:23:09 23 something that day. And it wasn't -- and during

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11:23:13 1 those times when he called Rachel, he told Rachel:
11:23:15 2 I'm done with the apartment. I'm leaving. Tell
11:23:19 3 Jim to come get the key.

11:23:21 4 Q. Was that information left via voice-mail
11:23:24 5 message?

11:23:25 6 A. Probably.

11:23:28 7 Q. Did any of those 30 phone calls occur
11:23:30 8 prior to your interaction with the officers?

11:23:34 9 A. No. Mike never called that morning or
11:23:38 10 the day before, for that matter. Or the day
11:23:42 11 before.

11:23:43 12 After -- after I had communicated with the
11:23:45 13 Little Portions Friary about Mike, other than maybe
11:23:50 14 seeing him on the -- maybe the 28th, very briefly,
11:23:55 15 I never saw him until the morning of the 1st.

11:23:58 16 Q. Did you have any conversation with Mike
11:24:01 17 either in the days leading up to January 1st or on
11:24:04 18 January 1st, prior to your interaction with the
11:24:07 19 Buffalo Police Department?

11:24:08 20 A. No.

11:24:12 21 Q. Sir, I understand you were originally
11:24:14 22 born in Ohio?

11:24:15 23 A. Yeah.

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11:24:15 1 Q. Did you attend any schooling in Ohio?

11:24:22 2 A. Yes.

11:24:23 3 Q. What school -- schooling did you attend
11:24:26 4 in Ohio?

11:24:30 5 A. I went to Chase Elementary School to
11:24:36 6 the third grade. I went to -- these are all in
11:24:38 7 Cincinnati. I went to Mount Airy Elementary School
11:24:41 8 in the third grade. I went to Clovernook
11:24:46 9 Elementary School for fourth, fifth, and sixth,
11:24:55 10 about two weeks of seventh grade. North College
11:24:58 11 Hill Junior High. That's it.

11:25:01 12 Q. Did you graduate high school?

11:25:02 13 A. No.

11:25:03 14 Q. What was the last grade that you
11:25:05 15 attended in your schooling in Ohio that you've just
11:25:09 16 described?

11:25:09 17 A. Seventh.

11:25:10 18 Q. Why did you drop out?

11:25:12 19 Did you drop out?

11:25:13 20 A. Yeah. I was shining shoes. I was
11:25:15 21 making money.

11:25:16 22 Q. Where in Ohio did you obtain your GED?

11:25:25 23 A. I can't remember. It's on the GED. It

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11:25:28 1 says where I got it. It was in Cincinnati, in
11:25:31 2 1978.

11:25:31 3 Q. 1978.

11:25:33 4 I understand you have an urban planning
11:25:40 5 degree from the University of Buffalo. Have you
11:25:44 6 gotten any additional degrees since you obtained
11:25:47 7 the urban planning degree?

11:25:50 8 A. No.

11:25:52 9 Q. Any additional schooling after that?

11:25:58 10 A. No.

11:25:58 11 Q. Have you ever worked in the field of
11:26:01 12 urban planning?

11:26:02 13 A. Not on a bet.

11:26:05 14 Q. What was your most recent employment
11:26:09 15 outside of the rental units that you own?

11:26:17 16 A. I am -- okay. The last three jobs
11:26:19 17 I had for a dollar bill.

11:26:22 18 Q. You don't even have to go that far for
11:26:25 19 three. I'm just asking the most recent.

11:26:27 20 A. Okay. Well, it's easy. I worked for
11:26:32 21 G&B Paving for six years when I was married with
11:26:40 22 Danielle Bradley. I got -- G&B closed, and
11:26:46 23 I worked for a different paver for one season.

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11:26:51 1 And at the end of the season, my back was
11:26:53 2 hurting, so I had -- I could -- within about
11:26:58 3 eight months, I could go back to work, and I had
11:27:00 4 a schwannoma removed -- schwannoma tumor removed
11:27:03 5 from my back.

11:27:08 6 I'm going to jump ahead. As an undergrad at
11:27:13 7 NCCC, I had two work study jobs. For like four
11:27:18 8 days I had one and for like a week I had another,
11:27:23 9 and I couldn't do either one of them, so that
11:27:25 10 didn't work out. And that's it.

11:27:28 11 Q. Your work at the two paving companies
11:27:31 12 that you've mentioned, was that as a laborer?

11:27:33 13 A. Yeah.

11:27:34 14 Q. Was there any type of accident or
11:27:36 15 injury that caused the back pain you mentioned?

11:27:39 16 A. No.

11:27:40 17 Q. Okay. When did you first start
11:27:42 18 experiencing the back pain?

11:27:44 19 A. That last year I was working.

11:27:49 20 Q. Do you recall what year that was?

11:27:51 21 A. I really want to say '97, '98.

11:27:56 22 Q. What year was your surgery?

11:27:57 23 A. I think it was '98.

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11:28:01 1 Q. Have you -- in the years after 1998,
11:28:07 2 have you continued to receive medical treatment for
11:28:09 3 either pain to your back or for the tumor?

11:28:11 4 A. I did until I realized that was going
11:28:14 5 no place. I think I chased that squirrel up the
11:28:20 6 tree for maybe two or three years trying to figure
11:28:22 7 out how to get rid of it hurting still.

11:28:26 8 My problem was probably that I didn't get
11:28:28 9 the right kind of rehab after the schwannoma was
11:28:33 10 removed and everything kind of got stiff back
11:28:35 11 there.

11:28:36 12 And I was essentially told sometimes you
11:28:37 13 come out of those surgeries and you're fine,
11:28:39 14 sometimes you come out and you're not. If you
11:28:41 15 can't do what you used to do, you're one of the
11:28:44 16 cannots.

11:28:45 17 Q. What were the things that you were not
11:28:49 18 able to do after that surgery?

11:28:50 19 A. Well, I wasn't pushing full barrels of
11:28:54 20 blacktop anywhere, and I wasn't working on my knees
11:28:57 21 finishing flatwork concrete anymore.

11:28:59 22 Q. Fair to say that general labor type
11:29:01 23 work in the construction fields you are unable to

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11:29:04 1 do after that surgery?

11:29:05 2 A. No. The kind of labor I did in the
11:29:07 3 construction field required a 23-year-old back, and
11:29:14 4 I didn't have one.

11:29:19 5 You can work -- you can work hard or you can
11:29:23 6 work smart. Well, at that point in my life, I was
11:29:26 7 working hard, and that's why I got paid was
11:29:31 8 because, you know, you can put seven wheelbarrows,
11:29:36 9 which is a ton of blacktop, on the ground here,
11:29:39 10 there, here, there, here, there, and keep doing
11:29:41 11 that all day long. That's working hard. It's not
11:29:44 12 working smart.

11:29:45 13 So what I was doing before the surgery was
11:29:48 14 I was working hard, and you can't work hard -- you
11:29:53 15 can't work smart to work hard. You can't do it.
11:29:57 16 Or I couldn't then.

11:29:59 17 Q. When did you stop treating for the back
11:30:02 18 tumor?

11:30:10 19 A. Well, I know I checked in and out with
11:30:17 20 the neurologist who took it out, and I think I saw
11:30:21 21 him five or six times after the operation, and that
11:30:27 22 was it.

11:30:27 23 Q. So would it be sometime in 1999 that

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11:30:30 1 you stopped treating for those issues with your
11:30:32 2 back?

11:30:42 3 A. It would be safe to say.

11:30:58 4 Q. Do you have any certificate or did you
11:31:02 5 graduate from the program you attended at American
11:31:06 6 Institute for Paralegal Studies in Cincinnati?

11:31:09 7 A. If I do -- if I did, I have no clue
11:31:11 8 where it is.

11:31:11 9 Q. Did you ever work in the legal field?

11:31:13 10 A. No. I had job offers in the legal
11:31:16 11 field, but no.

11:31:17 12 Q. Have you ever received any schooling or
11:31:20 13 training in the medical field?

11:31:27 14 A. As an undergrad at Niagara County
11:31:30 15 Community College, I took the lifesaving course.

11:31:36 16 Q. Like a CPR-type certification?

11:31:38 17 A. Yeah. Yeah.

11:31:40 18 Q. Any --

11:31:41 19 A. I don't know if I have a certification
11:31:42 20 in that either.

11:31:43 21 Q. Any other medical treatment -- excuse
11:31:45 22 me -- medical training beyond that course at NCCC?

11:31:51 23 A. No. Not that I know.

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11:31:53 1 Q. When did you have that course?

11:31:59 2 A. 2003, maybe.

11:32:05 3 Q. Aside from the collecting of the rents
11:32:08 4 for the Schmarbeck units, did you have any other
11:32:13 5 duties or responsibilities as a part of the
11:32:17 6 landlord for those properties in January of 2017?

11:32:27 7 A. Can you ask that again?

11:32:30 8 Q. Did you do anything beyond collecting
11:32:31 9 rent on those units in January of 2017, as the
11:32:37 10 landlord?

11:32:41 11 A. You mean to maintain the buildings?
11:32:43 12 Work on the buildings? Is that what you mean?

11:32:45 13 Q. It's a broad and open-ended question.
11:32:47 14 If that's what you did.

11:32:48 15 A. Yeah. Yeah. Anything that's ever got
11:32:53 16 fixed, except that roof on 24, the recent reroof,
11:33:03 17 at any of those buildings, hers or mine, I did the
11:33:06 18 work on it.

11:33:08 19 Q. Was there anything about the
11:33:11 20 January 1st, 2017 incident that prevented you from
11:33:13 21 doing any maintenance to the units that you acted
11:33:16 22 as the landlord for?

11:33:29 23 A. Yeah. Want me to tell you?

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11:33:33 1 Q. What specifically were you unable to do
11:33:35 2 as a result of that incident?

11:33:36 3 A. Everything slows down and takes longer.
11:33:45 4 I can't do high work at all hardly. I can get on
11:33:48 5 a ladder, but I don't feel confident that I can
11:34:00 6 hold on to the ladder with both hands. I've got to
11:34:02 7 hold on to the ladder with both hands now.

11:34:05 8 Q. Prior to the January 1st, 2017
11:34:08 9 incident, were you doing maintenance on a ladder to
11:34:11 10 any of those units?

11:34:12 11 A. Yeah. I was cleaning gutters every
11:34:14 12 year. I was -- if anything leaked, I fixed the
11:34:19 13 roof. If we had to hang aerials for TVs, I was on
11:34:26 14 the ladder. I don't go up more than about six feet
11:34:32 15 anymore. It's just -- if I'm going to be, you
11:34:35 16 know, using hand tools.

11:34:36 17 It's the hand tools. That's the problem.
11:34:40 18 If I'm holding on to the roof and I'm nailing like
11:34:44 19 this, I've lost hammers. My hands have let go.
11:34:49 20 Just like that, they let go. And I don't want to
11:34:53 21 be up high.

11:34:54 22 And I definitely don't want to work with
11:34:55 23 nobody up high, because if I'm up high and

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11:34:58 1 something goes wrong --

11:35:04 2 Q. Have you incurred any expenses as
11:35:06 3 a result of your inability to do that maintenance
11:35:09 4 that requires a ladder on these units?

11:35:11 5 A. Yeah. There -- okay. It's not just
11:35:18 6 limited to the ladder either.

11:35:20 7 Q. Why don't we stick with the question
11:35:22 8 I just asked --

11:35:22 9 A. Okay.

11:35:23 10 Q. -- and then we can broaden it out.

11:35:25 11 A. I had to pay a crew to do the roof over
11:35:28 12 at 24. The last -- the rolled roof and the deck
11:35:35 13 I did myself -- by myself on that building, but
11:35:40 14 I couldn't do it.

11:35:42 15 Q. Had you previously done roofing work at
11:35:45 16 any of your units prior to the January 1st, 2017
11:35:48 17 incident?

11:35:48 18 A. Yeah. I'm the guy that put the new
11:35:51 19 deck on 24 on that side of the house.

11:35:53 20 Q. My question was roofing prior to the
11:35:56 21 incident.

11:35:56 22 A. Yeah. The deck of the roof is what you
11:35:59 23 put on the roof before you put the shingles on it.

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11:36:05 1 The four-by-eight sheets, I hauled them up by myself.
11:36:09 2 I did all that work by myself. I ripped the roof
11:36:12 3 off by myself. I did a complete tear-off on that
11:36:16 4 whole side of 24.

11:36:18 5 And that rolled roofing wore out, so I needed
11:36:22 6 another roof on it, and we were going to put the
11:36:24 7 shingles on that new deck that was underneath, and
11:36:27 8 I couldn't do it.

11:36:28 9 Q. When did you hire a crew to complete
11:36:31 10 that roofing work on 24?

11:36:32 11 A. I don't remember the date. I could
11:36:34 12 find it out at some other date. I've got receipts.
11:36:38 13 I've got a receipt.

11:36:40 14 Q. Any other expenses you have had as
11:36:42 15 a result of your inability to do ladder -- what's
11:36:48 16 called ladder maintenance, if that makes sense?

11:36:50 17 A. I couldn't do -- this is -- no.

11:37:06 18 Q. Any other aspects of the maintenance to
11:37:08 19 the units that you have been unable to complete as
11:37:11 20 a result of the incident on January 1st, 2017?

11:37:14 21 A. Yeah. The area below the front porch
11:37:21 22 at 37 was stuccoed. I couldn't -- I couldn't hold
11:37:28 23 a trowel. I couldn't use a trowel to put the

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11:37:30 1 stucco on, so that job got hired out. And that was
11:37:35 2 ground work. That was standing flat on your feet,
11:37:38 3 but you had to use a trowel a lot, and you use
11:37:41 4 about an eight-by-four trowel.

11:37:43 5 Q. When did you hire someone to do that
11:37:45 6 work?

11:37:48 7 A. This past summer.

11:37:50 8 Q. Summer of 2019?

11:37:53 9 A. Yeah. Yeah. It was spring. Spring.
11:37:57 10 I think I got it done in the spring.

11:37:59 11 Q. The issues that you've identified with
11:38:01 12 doing maintenance while on a ladder and with regard
11:38:06 13 to the front porch work, you've identified your
11:38:09 14 hands as being the issue.

11:38:13 15 A. The wrists.

11:38:14 16 Q. What about your -- first off, is it
11:38:17 17 both your hands?

11:38:17 18 A. I'm right-handed. It's both of my
11:38:20 19 hands, but the right is more pronounced than the
11:38:23 20 left.

11:38:27 21 Q. What specifically do you experience to
11:38:29 22 your hands that causes difficulty in this
11:38:33 23 maintenance work?

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11:38:34 1 A. I don't have any confidence in being
11:38:37 2 able to hold anything and work with it. I used to
11:38:44 3 be one of the best painters I know. I can draw
11:38:46 4 a line forever, and I could.

11:38:52 5 A six-room apartment, you could knock it out
11:38:55 6 in three days by yourself. Well, now it takes me
11:38:58 7 ten days to do that because I'm dropping the
11:39:01 8 paintbrush. I've got to get down off the ladder to
11:39:03 9 get the paintbrush again.

11:39:05 10 I don't know when it's not going to work.

11:39:09 11 Q. When you say it's not going to work and
11:39:11 12 dropping things, is that the extent of the issues
11:39:13 13 you have with your hand is you have an inability to
11:39:17 14 hold objects?

11:39:17 15 A. With confidence.

11:39:25 16 This happened to me -- can I keep talking or
11:39:27 17 not?

11:39:28 18 Q. How long have you experienced
11:39:31 19 difficulty with your ability to hold objects in
11:39:34 20 both of your hands?

11:39:40 21 A. Since January 1st, 2017.

11:39:41 22 Q. Has there been any improvement or
11:39:46 23 change in this difficulty with holding objects

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11:39:52 1 since January 1st, 2017, to the present?

11:40:02 2 A. I'm just more aware of it. I think it
11:40:06 3 was about the same the whole time, but I just think
11:40:09 4 the further I get away from January of '17, the
11:40:17 5 more I notice like it's still doing it, it's still
11:40:20 6 doing it. That's what I mean.

11:40:24 7 Q. Are you seeing any medical provider
11:40:28 8 specific to these issues with your hands?

11:40:30 9 A. No.

11:40:32 10 Q. Why not?

11:40:38 11 A. I don't have the money.

11:40:44 12 Q. Have you ever described the issues that
11:40:48 13 you have with your hands to any medical provider?

11:40:50 14 A. Yeah.

11:40:51 15 Q. Who have you described these issues to?

11:40:53 16 A. I'll start with that primary that I saw
11:40:56 17 at 1500 Broadway about ten days into the month of
11:41:09 18 January in 2017, and then any primary that I have
11:41:12 19 since then.

11:41:14 20 Khan. Dr. Khan was at Family Practice.
11:41:17 21 I saw him probably for a year. But I know what
11:41:25 22 their responses always seem to be to me.

11:41:28 23 Q. So my question right now is just: What

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11:41:30 1 medical providers have you discussed the issues
11:41:32 2 with your hands with?

11:41:36 3 So we've mentioned the --

11:41:36 4 A. Yeah. Just those two.

11:41:37 5 Q. -- primary on Broadway and Dr. Khan?

11:41:39 6 A. Yeah.

11:41:41 7 Q. Just those two?

11:41:42 8 A. And -- and ECMC on the morning.

11:41:45 9 Q. When did you first notice issues with
11:41:49 10 holding objects in your hands?

11:41:54 11 A. Right after it happened. Particularly
11:41:57 12 with my right hand, because I do a lot with my
11:42:00 13 right hand.

11:42:00 14 Q. When you say, right after it happened,
11:42:02 15 are you referring to January 1st, 2017?

11:42:03 16 A. Yes, ma'am.

11:42:07 17 Q. Are you able to write? Handwrite?

11:42:14 18 A. Yeah. Yeah. I can sign my name, and
11:42:17 19 I can print. Yeah, I know how to do that.

11:42:19 20 Q. Do you experience any difficulty
11:42:21 21 handwriting?

11:42:22 22 A. I ain't going to do it long. I'm going
11:42:25 23 to put the pen down after a very short time. But

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11:42:29 1 since I've been in college, almost everything is on
11:42:32 2 a typewriter.

11:42:34 3 Q. Fair enough.

11:42:35 4 I would like to return back to your injuries
11:42:38 5 a little bit later, but I think where we -- before
11:42:41 6 we got diverted to it, I asked if there was
11:42:44 7 anything about the January 1st, 2017 incident that
11:42:46 8 prevented you from doing maintenance as a landlord
11:42:49 9 on your properties.

11:42:51 10 Have we discussed all of those issues? The
11:42:56 11 ladder work and then the work on the front porch of
11:43:00 12 37?

11:43:07 13 A. Yeah. And the extended time it takes
11:43:10 14 to get stuff done now compared with -- yeah.

11:43:13 15 Q. Aside from those things, is there any
11:43:16 16 other manner in which you've been prevented from
11:43:19 17 completing your duties as a landlord --

11:43:21 18 A. I'm going to say no.

11:43:25 19 Q. -- as a result of this incident?

11:43:26 20 A. I'm going to say no.

11:43:28 21 Q. Aside from your rental properties, do
11:43:31 22 you have any other employment today?

11:43:33 23 A. No.

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11:43:41 1 Q. Between January 1st, 2017 and today,
11:43:42 2 were you employed anywhere else other than as
11:43:44 3 a landlord?

11:43:45 4 A. No.

11:43:52 5 Q. Prior to January 1st, 2017, had you
11:43:54 6 ever encountered any of the officers who you
11:44:02 7 encountered on January 1st, 2017?

11:44:04 8 A. I don't know.

11:44:06 9 Q. Since January 1st, 2017, have you
11:44:09 10 encountered any of those officers?

11:44:10 11 A. I don't think so.

11:44:16 12 Q. Again, I'm trying not to cover the
11:44:19 13 same --

11:44:19 14 A. Oh, McDonald's. Hold -- you asked --
11:44:24 15 the last question, can you repeat your last
11:44:26 16 question?

11:44:26 17 MS. HUGGINS: Sure.

11:44:27 18 Do you mind reading it back?

11:44:27 19 (The above-requested portion was then read
11:44:46 20 by the reporter.)

11:44:46 21 THE WITNESS: McDonald's on Niagara Street,
11:44:50 22 Rachel and me took the kids there. I went in and
11:44:52 23 got the food, and I think either one of the --

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11:44:59 1 there was a male and a female officer in there, and
11:45:03 2 when I went over -- Rachel's out in the parking lot
11:45:09 3 in the car with the kids, and she recognized --
11:45:15 4 when I was -- I'll come back to that in a second.

11:45:18 5 When I was in getting the food, the two
11:45:21 6 officers were talking to each other, and the one
11:45:23 7 officer said, that's him. And when I turned around
11:45:27 8 and looked, they were five or six feet away from
11:45:33 9 me.

11:45:34 10 I think it was one of the female officers or
11:45:36 11 it might have been the male officer that said it,
11:45:39 12 but I know one of them two policemen had something
11:45:44 13 to do with this thing on Schmarbeck that day,
11:45:47 14 because when I came -- when I came out and crossed
11:45:50 15 the parking lot and got in, Rachel said to me: Did
11:45:54 16 you see them? And I said, the two that were in
11:45:57 17 there? And she said, yeah. And I said, yeah.
11:46:01 18 They were talking behind me, and I went to turn
11:46:04 19 around and look at them, and they were kind of
11:46:06 20 acting kind of strange.

11:46:08 21 We're convinced that somebody in that
11:46:10 22 McDonald's, but no, we didn't talk to each other,
11:46:15 23 there was no confrontation or anything like that,

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11:46:17 1 but I think we might have ran into one of them one
11:46:20 2 day over at McDonald's.

11:46:21 3 BY MS. HUGGINS:

11:46:21 4 Q. Did you yourself recognize either
11:46:23 5 of those officers at the McDonald's?

11:46:29 6 A. No, but I could just -- I knew
11:46:31 7 what I heard going on behind me, and it was
11:46:35 8 like: I think that's one of the police.

11:46:38 9 Q. When was that?

11:46:42 10 A. Better than two years ago.

11:46:44 11 Q. Are you referring to the McDonald's on
11:46:46 12 Niagara near Virginia?

11:46:48 13 A. Yeah.

11:46:52 14 Q. How long have you been in a relationship
11:46:54 15 with Rachel?

11:47:00 16 A. 16 years.

11:47:12 17 Q. I want to quickly update some of your
11:47:15 18 testimony on the 50-h.

11:47:16 19 Any bankruptcies since your testimony on
11:47:18 20 June 27, 2017?

11:47:19 21 A. No.

11:47:20 22 Q. Any military service since your
11:47:23 23 testimony in your 50-h?

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11:47:24 1 A. No.

11:47:25 2 Q. Any additional education or training
11:47:28 3 after you testified in your 50-h on June 27th,
11:47:32 4 2017?

11:47:32 5 A. No.

11:47:40 6 Q. Do you recall the day of the week that
11:47:43 7 January 1st, 2017 was?

11:47:45 8 A. No.

11:47:47 9 Q. Do you recall what you did the night
11:47:49 10 prior?

11:47:53 11 A. New Year's Eve?

11:47:54 12 Q. On New Year's Eve, December 31st.

11:47:57 13 A. Yeah. The same thing we do every year.
11:47:59 14 We stay at home.

11:48:00 15 Q. Do you recall what time you went to
11:48:01 16 bed?

11:48:07 17 A. I don't want to get that New Year's Eve
11:48:10 18 confused with another New Year's Eve, but I think
11:48:12 19 I fell asleep and Rachel was looking out the front
11:48:16 20 window at the Electric Tower, because you can see
11:48:18 21 the fireworks going off from our house.

11:48:25 22 But when I got up and went home, it was
11:48:27 23 probably 2 o'clock. She was sleeping.

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11:48:30 1 Q. Do you -- at that time in January --
11:48:33 2 well, in December of 2016 and January of 2017, you
11:48:38 3 and Rachel were sleeping in separate residences?

11:48:41 4 A. Yeah. She had a hospitalization,
11:48:53 5 I think it was in '15 -- '16? '15 or '16 -- and
11:49:02 6 she wanted to live by herself, so she moved into
11:49:09 7 37, and I would sleep between 33 and 37, if she had
11:49:14 8 a bad night and she said, come over here.

11:49:16 9 Q. Where did you wake up the morning of
11:49:19 10 January 1st, 2017?

11:49:23 11 A. I was at 33. I was sleeping in
11:49:25 12 a barber chair.

11:49:28 13 Q. In the 24 hours prior to your
11:49:31 14 interaction with the Buffalo police officers on
11:49:34 15 January 1st, did you consume any drugs or alcohol?

11:49:38 16 A. No.

11:49:38 17 Q. Did you consume any marijuana?

11:49:45 18 A. No.

11:49:48 19 Q. Did you skip taking any medications
11:49:50 20 that you were prescribed within that --

11:49:52 21 A. No.

11:49:53 22 Q. -- 24-hour period?

11:49:55 23 A. No.

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11:49:59 1 Q. Was anyone present at 33 when you woke
11:50:01 2 up on January 1st?

11:50:04 3 A. No.

11:50:05 4 Q. What did you do when you woke up?

11:50:10 5 A. Got my shoes on and went next door to
11:50:13 6 see if Earl was awake and Rachel and the boys.

11:50:16 7 Q. Was Earl staying in Rachel's unit on --
11:50:20 8 at that time period?

11:50:21 9 A. I think Earl was downstairs in the
11:50:23 10 first bedroom.

11:50:24 11 See, 37, where Rachel lived then, it's
11:50:29 12 a double, but she has both units. She uses the
11:50:33 13 whole house. Downstairs, there's a front bedroom
11:50:37 14 downstairs, which has a bed in it, and when Earl
11:50:40 15 comes over, Earl usually sleeps there.

11:50:45 16 There's Rachel and the three little boys,
11:50:48 17 they were in cribs then -- I'm pretty sure they
11:50:50 18 were still in cribs -- and they're all up on the
11:50:54 19 second floor.

11:50:55 20 I have a room in the back on the second
11:50:57 21 floor at 37 that has a bed in it. And then I've
11:51:00 22 got the office that's got a barber chair. I can go
11:51:04 23 over there. I've got two mats in the back, if I want

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11:51:08 1 to lay down.

11:51:09 2 But if I just go over there and turn on the
11:51:11 3 TV and go to sleep, it gives her a sense of she's
11:51:15 4 living by herself for a minute.

11:51:17 5 Q. What was the weather on January 1st,
11:51:30 6 2017?

11:51:30 7 A. I don't remember.

11:51:31 8 Q. What were you wearing?

11:51:36 9 A. The whole day? You mean when I went
11:51:38 10 outside?

11:51:39 11 Q. That morning.

11:51:42 12 A. I was wearing my -- a pair of pants and
11:51:45 13 a shirt, and I had -- I think I had a windbreaker
11:51:53 14 on, and I had leather-soled dress shoes on.

11:52:01 15 Q. What type of tread was on those
11:52:04 16 dress shoes?

11:52:08 17 A. All I can say is leather soles.

11:52:19 18 Q. At some point in the morning, you went
11:52:22 19 over to 37 Schmarbeck?

11:52:26 20 A. Yeah.

11:52:26 21 Q. What time did you leave 33 and go over
11:52:29 22 to 37?

11:52:30 23 A. It was early. Like 6:30, 7 o'clock in

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11:52:32 1 the morning. It was early.

11:52:36 2 Q. Who was present at 37 that morning?

11:52:44 3 A. From my memory it was me, Rachel, Earl,
11:52:47 4 and the three little boys.

11:52:51 5 Q. At some point that morning your
11:52:54 6 attention was drawn to a red van parked on
11:52:57 7 Schmarbeck Avenue?

11:52:58 8 A. Yeah. I saw Wolfe -- I saw the van
11:53:01 9 pull up. I was looking out the window when the van
11:53:06 10 pulled up.

11:53:06 11 Q. What type of street -- actually, strike
11:53:09 12 that.

11:53:09 13 The block that your properties are located
11:53:14 14 on Schmarbeck Avenue, is that a two-way street or
11:53:18 15 a one-way street?

11:53:21 16 A. It's a two-way street.

11:53:23 17 Q. How many lanes of traffic are located
11:53:27 18 on Schmarbeck Avenue within that block?

11:53:44 19 A. I would say you could -- well, I know
11:53:46 20 you could safely put three cars abreast, so you
11:53:49 21 could have a parked car on each side of the street
11:53:51 22 and one car could safely navigate right down the
11:53:55 23 middle.

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11:53:56 1 If it's a fire truck or something big, wide,
11:53:59 2 and I was going to say noisy, sometimes they have
11:54:04 3 trouble getting down the street. The garbage
11:54:08 4 trucks and the plow trucks sometimes, when there's
11:54:10 5 people parked on both sides, they'll have trouble
11:54:12 6 negotiating the street.

11:54:13 7 Q. Is there any crosswalk or indication on
11:54:17 8 the road for pedestrians within that block on
11:54:19 9 Schmarbeck?

11:54:22 10 A. Up at Broadway, after they milled
11:54:28 11 it -- I don't know what year that was -- with
11:54:32 12 enough calls to City Hall, they gave us a half
11:54:35 13 a crosswalk -- a half of paved -- of painted
11:54:39 14 pavement up at the corner.

11:54:41 15 They gave us, you know, a line -- a white
11:54:44 16 line where the car could pull to the white line,
11:54:46 17 but I think that was about it.

11:54:50 18 Q. And that's at the intersection of
11:54:51 19 Broadway and Schmarbeck?

11:54:52 20 A. Yeah. That's another 200 feet up the
11:54:55 21 street.

11:54:58 22 Q. What time was it when the red van
11:55:00 23 pulled up and parked on Schmarbeck?

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11:55:06 1 A. I don't remember the exact time.

11:55:07 2 Q. What drew your attention to the van?

11:55:10 3 A. Well, it pulled up in front of 33, and
11:55:14 4 Mike popped out of it. Mike Wolfe popped out of
11:55:18 5 the driver's side. That's what really drew my
11:55:21 6 attention to it was Mike Wolfe was driving it.

11:55:23 7 Q. Was that the first time you had seen
11:55:26 8 Mike since he had stopped staying at 33?

11:55:34 9 A. I think I saw him on like the 28th, but
11:55:37 10 it was like fleeting. Like he just walked down the
11:55:40 11 street and went in the house. But, yeah, that
11:55:46 12 was -- that was the first good look I had at him
11:55:49 13 and like that he was going to be there for a while.

11:55:54 14 Q. What about the red van concerned you?

11:55:59 15 A. It was a couple things. First, six,
11:56:04 16 eight weeks before, Mike had asked me to cash
11:56:07 17 a check, and I said, I'm not cashing your check.
11:56:10 18 I said, take it somewhere and get it cashed. He
11:56:13 19 said, well, I got no ID.

11:56:15 20 I said, well, how have you been cashing them
11:56:17 21 so far? And he said, well, I don't want to go
11:56:19 22 there. And I said, well, tell me. And he said,
11:56:22 23 I give it to the crack man. I said, well, go give

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11:56:25 1 that one to the crack man. Mike said, I owe him
11:56:28 2 money.

11:56:28 3 So I was like: I'm not going to help you.
11:56:32 4 You've got to have some ID. Can't Restoration give
11:56:36 5 you something to prove that you can cash a \$35
11:56:39 6 check? And he says, never mind.

11:56:42 7 But, yeah, he told me he didn't have
11:56:44 8 a driver's license.

11:56:47 9 Q. Did you ever contact the police the
11:56:49 10 morning of January 1st, 2017, with regard to the
11:56:51 11 red van?

11:56:53 12 A. No.

11:56:58 13 Q. When did you first notice police had
11:57:01 14 arrived on Schmarbeck Avenue on January 1st?

11:57:05 15 A. I'm going to say it was about ten or
11:57:09 16 15 minutes after Mike got there.

11:57:10 17 Mike pulled up, got out of the van, went in
11:57:13 18 the house. And I was like, as we're cooking and
11:57:19 19 we're negotiating in the kitchen, looking out on
11:57:21 20 all this, Earl said, what's going on? I said,
11:57:24 21 well, Mike's here.

11:57:25 22 I think I told Rachel: The bad penny's
11:57:31 23 back. And she said, why -- I think she said, did

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11:57:36 1 he go in the house, or what's going on? I said,
11:57:38 2 well, he just pulled up in a van.

11:57:40 3 Now, Earl wouldn't have known, but Rachel
11:57:43 4 might have mentioned it: Well, whose van is it?
11:57:47 5 And I said, I don't know. We'll figure it out.
11:57:50 6 We're not going to worry about it right now.

11:57:52 7 Q. The observations you made of the van
11:57:55 8 and the police when they arrived, that was all from
11:57:57 9 within the kitchen of 37?

11:58:00 10 A. Yeah, looking out the kitchen window.

11:58:01 11 Q. How many police did you first observe
11:58:04 12 arrive on Schmarbeck that morning?

11:58:07 13 A. Two. The first Tahoe pulled in the
11:58:09 14 middle of the road. It didn't pull over to the
11:58:12 15 curb. It pulled right in the center of the road.

11:58:15 16 Q. When you say two, do you mean two
11:58:18 17 vehicles or two officers?

11:58:19 18 A. No. Just one with two officers in
11:58:21 19 there. And only one got out.

11:58:23 20 Q. Please describe the physical appearance
11:58:26 21 of the officer that got out of the Tahoe.

11:58:35 22 A. I want to say he was tall, but that's
11:58:37 23 like -- I was 150 feet away. That's all I can tell

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11:58:46 1 you. He seemed to be a little taller than most.

11:58:50 2 And he was driving.

11:58:50 3 Q. What happened when the officer exited
11:58:52 4 the vehicle?

11:58:53 5 A. He walked over about to the curb, and
11:58:56 6 he stood there and talked to Mike. Mike came out
11:59:02 7 like as they were just almost simultaneously with
11:59:05 8 them coming down the street.

11:59:07 9 So Mike might have been waiting on the
11:59:08 10 sunporch there. He might have been standing on the
11:59:11 11 porch and come down off the steps to almost meet
11:59:13 12 them when they got there.

11:59:15 13 Q. Were you able to see what Mike was
11:59:17 14 doing before he walked out to the officer?

11:59:20 15 A. No.

11:59:24 16 Q. When you say that the officer walked to
11:59:27 17 the curb, is that the curb of the street and the
11:59:29 18 sidewalk?

11:59:31 19 A. Yeah.

11:59:33 20 Q. Is that in front of 33?

11:59:34 21 A. Yeah.

11:59:35 22 Q. What happened after you saw Mike and
11:59:40 23 the officer meet each other at the curb?

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11:59:45 1 A. I think there was some conversation in
11:59:47 2 the house between maybe me and Rachel. Maybe me
11:59:51 3 and Earl. I don't think I was standing there
11:59:54 4 staring out the window.

11:59:55 5 I was kind of, you know, doing things, look
11:59:58 6 out for a minute, check it out. I was more
12:00:01 7 concerned with just keeping an eye out that Mike
12:00:04 8 wasn't making off with the appliances out of the
12:00:08 9 apartment with this van that I knew wasn't his.

12:00:11 10 Q. What caused you to have that concern?

12:00:20 11 A. My experience as a landlord on the
12:00:22 12 East Side of Buffalo dealing with cross-addicted
12:00:26 13 mental health patients.

12:00:27 14 Q. Have you had previous tenants steal
12:00:28 15 appliances from you?

12:00:29 16 A. I've had previous tenants threaten to
12:00:32 17 steal appliances. I've had previous tenants break
12:00:39 18 them as they were walking out the door. So, you
12:00:43 19 know.

12:00:43 20 Q. Had Mike threatened to do that in this
12:00:46 21 unit?

12:00:47 22 A. Mike was noncommunicative. Mike was
12:00:49 23 like -- from the middle of December, we hadn't

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12:00:53 1 really said anything. And then when I found out
12:00:55 2 where he was and I tried to track him down that way
12:00:57 3 and say, are you going to give me the keys back?
12:01:00 4 Are you done over here? That didn't work too well
12:01:04 5 because --

12:01:07 6 Q. Did Mike owe you any rent on January 1st,
12:01:11 7 2017?

12:01:11 8 A. I don't remember.

12:01:12 9 Q. Did you have a written lease with Mike
12:01:14 10 Wolfe?

12:01:15 11 A. I had a rental agreement. We had the
12:01:18 12 same lease with everybody. If it's a Section 8
12:01:21 13 tenant, we call it a lease. If it's a guy on
12:01:24 14 month-to-month, we just call it a rental agreement.
12:01:26 15 But it's the same document.

12:01:28 16 Q. It's reduced to writing --

12:01:28 17 A. Yeah.

12:01:29 18 Q. -- in a document?

12:01:30 19 A. Yeah.

12:01:41 20 Q. The observations you made of the
12:01:45 21 officer conversing with Mike, that occurred from
12:01:48 22 the kitchen -- your vantage point in your kitchen
12:01:54 23 at 37 at the time?

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12:01:55 1 A. Yes.

12:01:55 2 Q. How long did you observe Mike and the
12:01:57 3 officer conversing from your window?

12:01:59 4 A. I don't remember exactly. And
12:02:01 5 remember, it's you're glancing out the window,
12:02:03 6 you're watching, you know, you're trying to keep
12:02:07 7 on -- I got three little ones. We're trying to
12:02:09 8 make breakfast.

12:02:10 9 Everybody's moving around the kitchen at
12:02:12 10 once, and we're trying to -- and I think I told
12:02:15 11 Earl: As long as he don't put nothing in the back
12:02:19 12 of that van, don't worry about it. You know, as
12:02:22 13 long as he's not hauling off the fridge, just don't
12:02:24 14 worry about it, Earl. It's no biggie. He's
12:02:26 15 probably just here getting stuff or something.

12:02:28 16 Q. During the period of time that the
12:02:29 17 officer was conversing with Mike at the curb, how
12:02:35 18 many police vehicles were present?

12:02:44 19 A. See, now, I'm almost relying on the
12:02:46 20 video and not my memory. Do you know what I mean
12:02:48 21 by that?

12:02:49 22 Q. Do you have difficulty remembering the
12:02:51 23 incident?

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12:02:56 1 A. I would be delighted to forget it.

12:03:01 2 Q. Do you have difficulty remembering the
12:03:04 3 incident?

12:03:08 4 A. The further I get away from it, the
12:03:12 5 less of it I remember real clearly. No, I don't
12:03:15 6 have difficulty remembering it.

12:03:18 7 Q. Did there come a time when you observed
12:03:19 8 a second police vehicle park on Schmarbeck in the
12:03:23 9 vicinity of 33?

12:03:29 10 A. I don't think I seen them pull up, but
12:03:33 11 yeah, at some point I became aware now there's two
12:03:37 12 cars out there.

12:03:37 13 Q. Where were you when you became aware of
12:03:39 14 the second car?

12:03:40 15 A. I was still upstairs.

12:03:43 16 Q. What point did you choose to exit 37 to
12:03:48 17 go outside?

12:03:50 18 A. I don't -- I don't know what -- I don't
12:03:55 19 know what kind of conversation we were having, me
12:03:58 20 and Earl and Rachel, but I think when the second
12:04:04 21 police car got there, I thought: Oh, there's
12:04:06 22 something serious going on down there.

12:04:10 23 Q. What, if anything, did you observe

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12:04:11 1 about the interaction between the police and Mike
12:04:14 2 that caused you to form that opinion?

12:04:16 3 A. I'm pretty sure the first police car
12:04:25 4 pulled up, the driver got out, walked over, Mike
12:04:29 5 talked to him.

12:04:29 6 Mike was pointing up at the kitchen window,
12:04:36 7 and I was like -- Rachel was concerned, because
12:04:39 8 Rachel noticed that, and she said, what is he
12:04:42 9 pointing up here for? And I said, I don't know.
12:04:46 10 Maybe he's telling him where his landlord lives.
12:04:48 11 I don't know.

12:04:48 12 Or maybe he knew I had left, because he
12:04:52 13 could have heard me leave that morning, and maybe
12:04:54 14 he said, well, if he's not back in the back, he's
12:04:57 15 over there.

12:05:00 16 When the second police car -- okay. They
12:05:03 17 talked for a minute, and then Mike disappears, and
12:05:06 18 then the second police car pulls up. And I think
12:05:09 19 I thought at the time like: Okay. Why are all
12:05:12 20 these cops converging on the house and Mike just --
12:05:18 21 what's going on with Mike? Mike just went in the
12:05:20 22 house.

12:05:20 23 I wasn't sure what conversation had gone on

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12:05:23 1 between Mike, but now more people were coming.

12:05:26 2 Q. Were you able to hear any of the
12:05:28 3 conversation from where you were?

12:05:29 4 A. No. Just -- no, I was not able to be
12:05:31 5 a party to hear any of that, but I know he was
12:05:34 6 pointing up at the house a couple of times.

12:05:37 7 Q. How long did the conversation between
12:05:40 8 the officers occur before you exited the home?

12:05:48 9 A. I don't know. I'd like to know, but
12:05:50 10 I don't.

12:05:51 11 Q. Did anyone summon you out of 37?

12:05:58 12 A. No.

12:05:59 13 Q. Did anyone call you and ask you to come
12:06:03 14 out of 37?

12:06:06 15 A. No.

12:06:14 16 Q. Who was with you when you exited the
12:06:16 17 house?

12:06:18 18 A. I thought Earl was like right with me
12:06:20 19 but he wasn't.

12:06:25 20 Q. What did you do when you exited 37?

12:06:29 21 A. I walked over to ask the driver of the
12:06:33 22 first Tahoe what was going on with Mike.

12:06:38 23 Q. Did you enter the roadway in order to

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12:06:42 1 approach the first Tahoe?

12:06:45 2 A. Yeah.

12:06:48 3 Q. Did you in any manner call out to the
12:06:50 4 police before you entered the roadway?

12:06:55 5 A. No.

12:07:06 6 Q. At the point that you approached the
12:07:08 7 first Tahoe in the roadway, were any of the
12:07:10 8 officers outside of the police vehicles?

12:07:21 9 A. I think when I last looked out the
12:07:26 10 window or watched or saw on the monitor, there was
12:07:30 11 one of the policemen was still out of the car.

12:07:33 12 When I left the house, my impression was
12:07:36 13 that he was still going to be there. That's what
12:07:41 14 I thought. I said, well, they're still out there.
12:07:43 15 I'll go talk to them.

12:07:44 16 Q. When you mentioned the monitor, do you
12:07:46 17 mean that your answer is from both your
12:07:48 18 recollection and later viewing video?

12:07:54 19 A. No. That's a direct recollection from
12:07:57 20 the morning. I remember there's still somebody out
12:08:00 21 of the car. Let's go, Earl.

12:08:03 22 And he had to find his boots, and he had to
12:08:05 23 get his boots on. Just slide them on. You can tie

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12:08:10 1 them outside. But let's go find out, before they
12:08:14 2 go, what's going on. Or before Mike gets in deep
12:08:18 3 shit. Or, you know, before somebody gets in
12:08:22 4 trouble that maybe ought not to be in no trouble.

12:08:25 5 Q. Had you ever intervened with the police
12:08:27 6 and Mike prior to this date?

12:08:28 7 A. No. No. I don't do that. I don't
12:08:31 8 intervene.

12:08:40 9 Q. At some point the first police Tahoe
12:08:43 10 pulled away?

12:08:46 11 A. I left the house, walked down the
12:08:49 12 steps, walked out into the street, and then made
12:08:51 13 a left to walk up to the driver's side.

12:08:55 14 As I was walking up to the vehicle, I said,
12:08:58 15 can I talk to you? The officer on the left-hand
12:09:02 16 side, in the passenger seat, a male officer, he
12:09:06 17 started waving his arms and screaming really loud:
12:09:09 18 No. We're leaving now. We're leaving now. We're
12:09:12 19 not talking to anybody.

12:09:14 20 Q. Were you in the roadway when the
12:09:17 21 officer yelled?

12:09:19 22 A. No. I was in the roadway to the right
12:09:21 23 of the Tahoe. I was already on the -- my right,

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12:09:27 1 his left. I was not standing in front of the

12:09:29 2 Tahoe, no.

12:09:30 3 Q. Would that have been the driver's side
12:09:33 4 vehicle -- the driver's side of the Tahoe that you
12:09:35 5 were on?

12:09:35 6 A. Yeah. Yeah. I was already -- because
12:09:38 7 I was trying to walk up to the door -- to the
12:09:41 8 driver's door of the first Tahoe.

12:09:43 9 Q. On the roadway of Schmarbeck?

12:09:46 10 A. Yeah.

12:09:46 11 Q. How long or how much time elapsed from
12:09:52 12 when you exited 37, to when you approached the
12:09:55 13 first Tahoe?

12:09:58 14 A. Maybe 14 seconds it takes. I don't
12:10:03 15 know. I never timed that.

12:10:05 16 The time it takes to leave the front door,
12:10:07 17 go down the steps. I might have checked the mail.
12:10:12 18 I don't know. I might have looked in the mailbox
12:10:14 19 for Rachel. I don't know.

12:10:15 20 Q. Where was the second police vehicle at
12:10:17 21 the time that you approached the first Tahoe?

12:10:23 22 A. She was directly -- she was to the
12:10:29 23 passenger side rear. Like diagonal, like behind

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12:10:35 1 him.

12:10:35 2 Q. Behind the first Tahoe?

12:10:37 3 A. Yeah.

12:10:41 4 Q. After the first Tahoe pulled away, did
12:10:44 5 you turn your attention to the second vehicle?

12:10:51 6 A. As soon as I heard the guy in there
12:10:53 7 screaming: I'm not going to talk to anybody --
12:10:55 8 we're not talking to anybody. We're not talking to
12:10:57 9 anybody -- as soon as I heard that, I said, oh,
12:11:00 10 okay. He's not going to talk to nobody. So I just
12:11:03 11 walked past the Tahoe.

12:11:05 12 As soon as I came around the back of that
12:11:07 13 Tahoe, I looked over, and I saw the woman in the
12:11:12 14 other Tahoe parked at the curb, and I said --

12:11:17 15 Q. My question was going to be: Did you
12:11:19 16 have any conversation with that officer?

12:11:20 17 A. I said, can I speak to you? And she
12:11:24 18 cocked her head and smiled.

12:11:27 19 Q. Did the officer -- strike that.

12:11:38 20 After the time that you turned and looked at
12:11:41 21 the second vehicle, had you changed the position of
12:11:45 22 your body with relation to the vehicle -- that's
12:11:51 23 already gotten very convoluted. Let me rephrase

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12:11:54 1 that.

12:11:55 2 At the time that you turned your attention
12:11:57 3 to the second vehicle, where were you positioned on
12:11:59 4 the roadway in Schmarbeck?

12:12:03 5 A. I want to say I was -- I was -- it
12:12:05 6 seems like I would have been dead in the middle of
12:12:07 7 the road facing her.

12:12:09 8 Q. Did you ever approach the second police
12:12:13 9 vehicle?

12:12:16 10 A. Yeah. I took two steps toward it.
12:12:18 11 After she smiled at me, I took two steps forward
12:12:22 12 and looked up.

12:12:33 13 Q. Where was your body positioned in
12:12:35 14 relation to that second Tahoe?

12:12:41 15 A. I don't understand how to answer that.
12:12:44 16 I don't understand the question.

12:12:45 17 Q. How was your body oriented to that
12:12:48 18 Tahoe?

12:12:48 19 What side of the vehicle were you on or
12:12:51 20 walking towards?

12:12:54 21 MR. DAVENPORT: Well, form. He didn't --
12:12:57 22 well, you can go ahead and answer.

12:12:58 23 THE WITNESS: The driver's side. The

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12:13:00 1 driver's side. Like I was about even with the
12:13:05 2 front wheel.

12:13:26 3 BY MS. HUGGINS:

12:13:26 4 Q. Did the driver of the second Tahoe ever
12:13:28 5 roll down the window?

12:13:36 6 A. I don't know.

12:13:36 7 Q. Did that driver ever summons you
12:13:39 8 towards the vehicle?

12:13:49 9 A. I thought her smile was the
12:13:51 10 acknowledgement that she heard my question and
12:13:54 11 that she wasn't -- that she was going to be
12:14:00 12 receptive to speaking to me.

12:14:01 13 I thought when she looked over at me and she
12:14:04 14 smiled, that that acknowledgement was: Yeah, I'm
12:14:06 15 here.

12:14:07 16 Q. How much time elapsed from when you
12:14:09 17 began approaching the vehicle, to when you claim
12:14:12 18 you were struck?

12:14:16 19 A. I claim? I'm going to say five seconds
12:14:32 20 before she crashed into me.

12:14:34 21 Q. Did you take any effort to avoid the
12:14:37 22 vehicle?

12:14:38 23 A. Her vehicle?

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12:14:40 1 Q. Correct. Did you take any effort to
12:14:43 2 avoid the vehicle?

12:14:43 3 A. I didn't know she was moving her
12:14:47 4 vehicle.

12:15:01 5 Q. What part of your bodies -- or what
12:15:05 6 part of your body was struck by the vehicle?

12:15:12 7 A. I took two steps around the back of the
12:15:14 8 Tahoe, I looked up, I saw the car was coming at me,
12:15:17 9 I put my hands out in front of me, and I closed my
12:15:20 10 eyes.

12:15:23 11 The next thing I know, I was on the ground
12:15:25 12 and the back of my head hurt. I don't know.
12:15:31 13 I don't know if my hands hit, my hips hit. I don't
12:15:34 14 know.

12:15:36 15 Q. Why did you close your eyes?

12:15:38 16 A. I was scared she was going to hit me
12:15:40 17 with the car.

12:15:45 18 Q. Did you take any other action to try to
12:15:47 19 move out of the way?

12:15:49 20 A. There wasn't time to move out of the
12:16:01 21 way.

12:16:01 22 Q. Where did you experience the pain to
12:16:04 23 your head?

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12:16:04 1 A. In the back of my head.

12:16:17 2 Q. Do you have any recollection of the
12:16:21 3 vehicle striking you?

12:16:33 4 A. I have -- I don't have a visual
12:16:37 5 recollection of it, but I have a recollection in
12:16:40 6 my head of falling. I remember falling down.
12:16:44 7 I remember: Oh, Christ. It's the first -- you're
12:16:48 8 talking to yourself, you know. I remember that.

12:16:58 9 Q. What part of the vehicle struck your
12:17:00 10 body?

12:17:03 11 A. I don't know. I put my hands out.
12:17:05 12 That's all.

12:17:12 13 Q. Did you notice any injury to your hands
12:17:19 14 after you claim the vehicle struck you?

12:17:24 15 A. Like within the first minute? No.
12:17:28 16 I wasn't --

12:17:29 17 Q. Immediately after.

12:17:30 18 A. After I hit the ground, my head was
12:17:32 19 hurting so bad, I wasn't paying no attention to
12:17:37 20 nothing else but the back of my head.

12:17:38 21 Q. Where was your body positioned with
12:17:40 22 relation to the Tahoe when you landed on the
12:17:45 23 ground?

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12:17:49 1 A. I don't know when I landed on the
12:17:52 2 ground, but I know when I opened my eyes where
12:17:55 3 I was. Like my first recollection after I hit the
12:17:57 4 ground, I know where I was then.

12:18:01 5 Q. How much period of time elapsed before
12:18:03 6 you opened your eyes while you were on --

12:18:05 7 A. I don't know.

12:18:06 8 Q. -- the ground?

12:18:07 9 A. I don't know.

12:18:08 10 Q. Where were you when you opened your
12:18:09 11 eyes?

12:18:10 12 A. I was laying on my back, and when I go
12:18:15 13 to get up when I'm laying on my back in the street,
12:18:18 14 I kind of bend up forward, and as I bent up
12:18:22 15 forward, I looked at my feet, and my feet was up
12:18:24 16 and underneath the car.

12:18:25 17 And the first thing I thought is: She's
12:18:29 18 going to run over my legs. So I turned to my left
12:18:31 19 side, and it looked like a silent movie. It had to
12:18:39 20 look like a silent movie, because I don't remember
12:18:42 21 hearing anything, and I like moved my feet like
12:18:45 22 I was pedaling to get out from underneath the car.

12:18:47 23 And then when I got out from under it, I was

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12:18:50 1 on my left side, and I was looking down Schmarbeck
12:18:53 2 on my side, like this, and I'm opening and I'm
12:18:56 3 closing my eyes as I'm coming around, and I look
12:19:00 4 down toward Schlenker, where the stop sign is, and
12:19:05 5 I remember seeing the police car down there.

12:19:07 6 I don't remember if he had his lights on or
12:19:09 7 not, but as I started -- as I realized then, oh,
12:19:13 8 okay, I'm out from underneath this car, there's
12:19:16 9 a cop car down there, okay, all right, I know where
12:19:19 10 I'm at, I started to lean forward to get up, and as
12:19:22 11 soon as I leaned forward to get up, that's when the
12:19:25 12 back of my head really -- that's when the pain
12:19:29 13 really took off.

12:19:29 14 Q. Were you able to actually physically
12:19:31 15 get off the ground --

12:19:33 16 A. No.

12:19:33 17 Q. -- before you felt the pain?

12:19:34 18 A. No. And as soon as the shot of pain
12:19:40 19 went through me, I started yelling for Earl.

12:19:42 20 Q. Aside from the pain to the back of your
12:19:44 21 head, did you notice any other injuries at that
12:19:46 22 point?

12:19:47 23 A. No.

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12:19:51 1 Q. When did police officers exit that
12:19:56 2 second Tahoe?

12:20:05 3 A. All my recollection of what you just
12:20:07 4 asked me is from the video.

12:20:09 5 Q. Okay. Fair enough.

12:20:10 6 Do you have any recollection -- strike that.

12:20:20 7 When is -- at what point in time do you next
12:20:25 8 remember something from while you were at Schmarbeck?

12:20:34 9 A. After I started to get up and the pow
12:20:37 10 happened in the back of my head, it just -- it was
12:20:40 11 like, bang. It hurt real bad.

12:20:42 12 After that happened, I grabbed the back of
12:20:44 13 my head, and I laid back down, and I said, Earl?
12:20:47 14 I said, Earl? And I heard him say, Dad? And
12:20:52 15 I said, yeah. Call an ambulance. The back of my
12:20:54 16 head hurts. This hurts too bad. And he said,
12:20:58 17 all right.

12:21:02 18 And I think he said, just stay there. And
12:21:07 19 I said, I'm not going anywhere. Then I just closed
12:21:15 20 my eyes and laid there for a minute, holding the
12:21:17 21 back of my head.

12:21:18 22 And I don't know how long it was, but I think
12:21:23 23 somebody asked me a question, and I thought it was

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12:21:27 1 Earl. I don't know what the question was, but
12:21:31 2 I thought somebody said something to me, and it was
12:21:41 3 about that time I opened my eyes, and I looked up,
12:21:43 4 and then it started getting ridiculous.

12:21:45 5 Q. So when you said that certain things
12:21:51 6 from your memory are from the video and not your
12:21:54 7 recollection --

12:21:55 8 A. Yeah.

12:21:55 9 Q. -- is that due to difficulty recalling
12:22:00 10 what happened that day or because you lost
12:22:01 11 consciousness?

12:22:06 12 A. I got out from under the police car and
12:22:08 13 I looked down Schlenker, and I seen the back of
12:22:10 14 that police car. At that point it starts hurting
12:22:13 15 and I'm putting my hand up and I'm grabbing the
12:22:17 16 back of my head, and I'm thinking: What are you
12:22:20 17 going to do? Can you get up? You tried that once.
12:22:23 18 That's not going to work. Get Earl?

12:22:30 19 I didn't see that police car down at
12:22:34 20 Schlenker back up the street, but I know he backed
12:22:37 21 up the street because I seen it on the video, so
12:22:42 22 I know he backed up the street.

12:22:43 23 Now, whether I was looking down the street

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12:22:45 1 at him as he was backing up, I don't know. Or was
12:22:50 2 I looking down the street when he was still going
12:22:52 3 toward the stop sign, I don't know. But I know he
12:22:57 4 eventually backed up the street.

12:23:00 5 Q. So any difficulty in just describing
12:23:06 6 this is not from you losing consciousness or an
12:23:09 7 inability to recall the incident, it's because you
12:23:12 8 watched a video since then?

12:23:13 9 A. I don't know.

12:23:14 10 Q. Okay.

12:23:14 11 A. I don't know whether I lost
12:23:15 12 consciousness for five seconds or two seconds or
12:23:17 13 whether I was conscious the whole time.

12:23:19 14 Q. Fair enough.

12:23:20 15 At any point while you were on Schmarbeck
12:23:26 16 Avenue, did you hear any of the conversation
12:23:29 17 between and amongst the officers present?

12:23:41 18 A. There were bits and pieces that
12:23:43 19 I picked up here and there.

12:23:44 20 Q. What were you able to hear?

12:23:46 21 A. While I was laying on the ground --
12:23:49 22 we're back to that point -- I opened my eyes and
12:23:53 23 looked up. I saw a policewoman with her hands on

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12:23:56 1 her hips, and as soon as I opened my eyes, she
12:23:59 2 said, if you don't get off the ground, I'm going to
12:24:01 3 arrest you.

12:24:03 4 Q. My question is if you heard
12:24:05 5 conversation between and amongst the officers.

12:24:08 6 A. Not that I remember.

12:24:09 7 Q. Okay. At some point you were placed
12:24:18 8 under arrest and placed in the back of a police
12:24:21 9 vehicle while on Schmarbeck Avenue?

12:24:24 10 A. Yes.

12:24:25 11 Q. Which of the Tahoe vehicles were you
12:24:27 12 placed in?

12:24:28 13 A. The one with the males in it.

12:24:36 14 Q. At any point when you exited
12:24:38 15 37 Schmarbeck, until your arrest, did you have
12:24:40 16 access to a cell phone?

12:24:54 17 A. I had to have a cell phone in my pocket
12:24:57 18 because I was booked in with a cell phone.

12:24:59 19 Q. Did you call anyone during that period
12:25:05 20 of time?

12:25:05 21 A. After I exited 37?

12:25:07 22 Q. Yeah.

12:25:08 23 To qualify just the time frame: Exiting 37,

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12:25:11 1 until you were arrested, did you contact anyone on
12:25:14 2 your cell phone?

12:25:15 3 A. No.

12:25:16 4 Q. Did you do anything with your cell phone
12:25:18 5 in any attempt to record or photograph what
12:25:20 6 happened?

12:25:25 7 A. No.

12:25:31 8 Q. How long were you in the back of the
12:25:34 9 police vehicle before being transported away from
12:25:39 10 Schmarbeck Avenue?

12:25:42 11 A. I have no recollection of time, as far
12:25:47 12 as the length of it, other than the video, and
12:25:52 13 I tried to figure out once how long was -- how long
12:25:56 14 did all this happen, and I really couldn't piece it
12:25:59 15 together. I couldn't figure it out.

12:26:00 16 I think I was in the back of the car, as
12:26:04 17 best as I can guess, better than a half hour.

12:26:09 18 Q. When you attempted to calculate that
12:26:12 19 time by watching the video, were you able to view
12:26:18 20 continuous video from the time you were placed in
12:26:20 21 the vehicle, until the vehicle left Schmarbeck?

12:26:23 22 A. No. When I was trying to figure that
12:26:25 23 out, I was using that timer up on top of the video.

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12:26:27 1 I was trying to see, okay, this happened at this
12:26:31 2 time to try to figure out how long the whole thing
12:26:34 3 lasted. No. The answer's no.

12:26:46 4 Q. Did you request any medical attention
12:26:48 5 from any of the officers while you were still on
12:26:52 6 Schmarbeck Avenue?

12:27:01 7 A. The officers were present and would
12:27:03 8 have heard me tell Earl: Call an ambulance.

12:27:06 9 Q. Did you specifically ask any officers
12:27:09 10 for medical attention?

12:27:19 11 A. No.

12:27:19 12 Q. Did you identify the pain you were
12:27:23 13 experiencing to the back of your head to any of the
12:27:25 14 officers while you were on scene on Schmarbeck
12:27:30 15 Avenue?

12:27:30 16 A. After the policewoman said, if you
12:27:36 17 don't get up, I'm going to arrest you, I don't
12:27:41 18 remember the exact words I used, but I made it
12:27:45 19 quite clear to her, and I think it was something
12:27:49 20 along the lines: You just hit me with a police
12:27:53 21 car, and the back of my head's on fire. I'm not
12:27:56 22 getting off the ground. I'm going to go to the
12:27:58 23 hospital in an ambulance. Or something to that

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12:28:00 1 effect.

12:28:03 2 And honest to God, after she threatened to
12:28:07 3 arrest me, I was like: This whole thing is getting
12:28:10 4 ludicrous, and like, you know, when somebody tells
12:28:14 5 you they're going to arrest you after they hit you
12:28:16 6 with a police car, you don't want to be in
12:28:19 7 conversational mode with those people.

12:28:20 8 Q. What medical attention, if any, did you
12:28:23 9 want while you were still on Schmarbeck Avenue?

12:28:27 10 A. I just wanted my head to stop hurting.

12:28:35 11 Q. Was there any specific medical
12:28:37 12 attention that you requested of the officers while
12:28:39 13 you were on Schmarbeck Avenue?

12:28:42 14 A. No.

12:28:44 15 Q. Were you taken directly to ECMC when
12:28:48 16 the Tahoe departed from Schmarbeck Avenue?

12:28:51 17 A. I was laying down in the back seat of
12:28:53 18 the Tahoe when they took me. I don't know.

12:29:02 19 Q. Okay. Another way to ask that: Was
12:29:05 20 there any stops made en route to ECMC?

12:29:13 21 A. I don't know.

12:29:14 22 Q. Did you --

12:29:14 23 A. I mean, I don't think they turned on

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12:29:19 1 the lights. I know they --

12:29:21 2 Q. Well, that's not my question.

12:29:22 3 A. Okay.

12:29:23 4 Q. My question is: Were you taken
12:29:24 5 directly to ECMC when you were transported from
12:29:28 6 Schmarbeck Avenue?

12:29:28 7 A. I don't know.

12:29:29 8 Q. Did you lose consciousness at any
12:29:32 9 period of time when you were --

12:29:33 10 A. I don't know.

12:29:33 11 Q. -- in the vehicle?

12:29:34 12 A. If I lost consciousness, I don't
12:29:37 13 remember. I wouldn't have known it. I didn't know
12:29:39 14 it.

12:29:39 15 Q. Do you have gaps in your memory from
12:29:41 16 while you were in the police vehicle?

12:29:53 17 A. See, I got --

12:29:54 18 Q. Let me ask it this way --

12:29:56 19 A. I don't remember getting out of the
12:29:58 20 police vehicle at ECMC and getting in the room at
12:30:01 21 ECMC. I can't remember how I got down the hallway.
12:30:13 22 And there might be pieces of that ride that I don't
12:30:15 23 remember in the same way.

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12:30:16 1 Q. Do you remember being taken anywhere
12:30:19 2 else between Schmarbeck Avenue and ECMC that
12:30:22 3 morning?

12:30:22 4 A. No, I don't remember.

12:30:31 5 Q. What medical treatment, if any, did you
12:30:33 6 receive while you were at ECMC that morning?

12:30:39 7 A. Medical records are Latin to me, so
12:30:43 8 I don't understand them.

12:30:43 9 Q. Not based on the records, but your
12:30:46 10 recollection of that morning.

12:30:49 11 A. There was a nurse that saw me. I think
12:30:52 12 there was a doctor that saw me. They put me in
12:30:56 13 I think an MRI tube. The big metal one. I had one
12:31:00 14 of those for -- I don't know -- a minute or so.
12:31:06 15 I can't remember if they gave me fluids or not.

12:31:13 16 Q. Did you make any requests for specific
12:31:16 17 medical treatment of any ECMC staff?

12:31:19 18 A. Yeah. The first nurse that walked in.

12:31:21 19 Q. What did you request of her?

12:31:23 20 A. To leave me alone. To get as far away
12:31:26 21 from me as possible. I didn't want her involved in
12:31:31 22 my care.

12:31:32 23 Q. Did you make any requests for medical

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12:31:34 1 treatment from any other ECMC staff?

12:31:35 2 A. I told them I wanted to see a doctor.

12:31:38 3 When the nurse would come in at the

12:31:40 4 beginning, I'd say, when am I going to see the

12:31:43 5 doctor? I wanted to see the doctor. I wanted to

12:31:46 6 see a doctor.

12:31:46 7 Q. And at some point that morning, you saw

12:31:50 8 a doctor?

12:31:50 9 A. Yeah.

12:31:50 10 Q. Did the doctor perform any examination

12:31:52 11 of you?

12:31:52 12 A. Yeah. He looked at my head. He was

12:31:55 13 the one who told them to get the handcuffs off.

12:31:58 14 I'm pretty sure he was.

12:32:04 15 Q. Did you receive any stitches that

12:32:06 16 morning?

12:32:07 17 A. No. No.

12:32:07 18 Q. Did you receive -- strike that.

12:32:10 19 Were any medical procedures of any kind

12:32:13 20 performed on you that morning?

12:32:14 21 A. I think they put something on the front

12:32:16 22 of my head, because I had a -- I had -- they said

12:32:19 23 I had an abrasion on the front of my head.

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12:32:29 1 Q. Were you bleeding from anywhere?

12:32:30 2 A. I don't think so. I might have been
12:32:31 3 bleeding from the front, but I wasn't bleeding from
12:32:33 4 the back.

12:32:33 5 Q. Have you ever received an MRI prior to
12:32:36 6 January 1st, 2017, to your head?

12:32:45 7 A. I don't know if I had one as part of
12:32:47 8 that back surgery in '98 or not.

12:32:52 9 Q. Had you ever received an x-ray or
12:32:53 10 a CAT scan of any kind to your head or neck prior
12:32:57 11 to January 1st, 2017?

12:32:57 12 A. I don't know how to -- I don't know.

12:33:01 13 Q. Did you ever describe, to any medical
12:33:06 14 professionals at ECMC, what occurred on Schmarbeck
12:33:09 15 Avenue that morning?

12:33:20 16 A. Yeah. The nurse and the doctor that
12:33:22 17 I -- the second nurse and the doctor.

12:33:25 18 Q. Did you observe any of those medical
12:33:28 19 professionals, the nurse or the doctor, record your
12:33:33 20 description of what happened that day?

12:33:37 21 A. No.

12:33:37 22 Q. Did you observe any of those medical
12:33:39 23 professionals take any notes or make any notations

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12:33:43 1 while they were speaking with you?

12:33:46 2 A. No. I think almost all that stuff was
12:33:48 3 done in the hallway on a computer.

12:34:02 4 Q. Have you made any claims about ECMC or
12:34:04 5 its staff with regard to your medical treatment
12:34:07 6 that morning?

12:34:14 7 A. You mean officially, like filed
12:34:16 8 a complaint with them or something?

12:34:18 9 Q. Let me break it down in two ways.
12:34:20 10 Have you done anything like that legally or
12:34:22 11 submitted any type of complaint to ECMC for your
12:34:24 12 medical treatment that morning?

12:34:26 13 A. No.

12:34:27 14 Q. Have you given any statements to anyone
12:34:30 15 at ECMC, aside from the statements you made to
12:34:35 16 staff during your actual treatment, with regard to
12:34:39 17 the conduct or the manner in which ECMC conducted
12:34:41 18 your treatment that day?

12:34:43 19 A. Yes. The answer is yes, I think.

12:34:45 20 Q. Where did you give those statements?

12:34:46 21 A. I called ECMC several -- I think on
12:34:53 22 several occasions very early on, like the first
12:34:55 23 week of January, second week of January, because

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12:35:03 1 the very first nurse in the room, the one I had the
12:35:06 2 most issue with, I thought that they ought to be
12:35:11 3 aware of that.

12:35:12 4 Q. Who did you contact at ECMC?

12:35:15 5 A. I think my first contact was with
12:35:20 6 somebody in social work to find out who to contact,
12:35:23 7 and then I tried to contact somebody. I may have
12:35:27 8 sent an email to her.

12:35:29 9 I can't remember her name off the top of my
12:35:34 10 head. She was like the head nurse of the emergency
12:35:37 11 department or something like that.

12:35:39 12 I also talked to the chaplain's office at
12:35:41 13 some point. And I made several calls I think to
12:35:44 14 social work to try to get somebody to realize what
12:35:49 15 had happened and that that would be better if it
12:35:54 16 didn't happen again.

12:35:55 17 Q. The head nurse that you referred to, is
12:35:58 18 that the person you made a complaint with or is
12:36:00 19 that the person you were making the complaint
12:36:02 20 about?

12:36:02 21 A. I never -- I never made a complaint --
12:36:08 22 I can't -- I don't ever remember making a complaint
12:36:12 23 in writing, but it was the one that I was speaking

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12:36:14 1 to, not the one that I was making it about.

12:36:19 2 And the complaint really wasn't that
12:36:22 3 serious. It really was more about -- well, I can
12:36:27 4 tell you what it was about, if you want to know.

12:36:29 5 Q. Well, I'm asking if you made a complaint
12:36:32 6 about the manner in which ECMC staff treated you
12:36:34 7 that morning.

12:36:34 8 A. Yeah. One person. The person I didn't
12:36:38 9 want to treat me.

12:36:39 10 Q. It was that first initial nurse you
12:36:41 11 mentioned?

12:36:42 12 A. Yeah, it was the first nurse that
12:36:43 13 walked in the door. And she asked me: What's
12:36:45 14 wrong with you? Why did you jump on top of
12:36:49 15 a police car? And I said, I didn't jump on top
12:36:51 16 of a police car. Who told you that?

12:36:54 17 Q. When did you send the email to ECMC
12:36:59 18 with regard to your concerns?

12:37:00 19 A. I don't remember. I don't remember.

12:37:01 20 Q. Was it within the calendar year of this
12:37:03 21 incident occurring?

12:37:04 22 A. I would think so, yeah.

12:37:07 23 Q. Was it that winter?

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12:37:10 1 A. I'm pretty sure.

12:37:11 2 Q. Do you know if it was in the month of
12:37:13 3 January 2017?

12:37:13 4 A. Could have been. The closer to the
12:37:19 5 incident, the more accurate we would be of finding
12:37:22 6 when it -- when it happened.

12:37:24 7 And I had no knowledge of Internal Affairs
12:37:28 8 or I had no knowledge of the federal lawsuit or
12:37:31 9 I had no knowledge of that at that point.

12:37:34 10 At that point I didn't think I could
12:37:36 11 control -- still don't think I can control any of
12:37:39 12 that behavior on the part of the police.

12:37:43 13 All I was thinking about was what happened
12:37:45 14 to me at ECMC when she walked in there accusing me
12:37:50 15 like of what the police accused me of.

12:37:53 16 And I was like: That's not how you treat
12:37:56 17 people like when they come in the emergency room.
12:37:59 18 You just don't walk in the door and say, why did
12:38:01 19 you jump on a police car? I didn't do that.

12:38:03 20 Q. At some point did you make a complaint
12:38:05 21 with regard to the handcuffs to ECMC staff?

12:38:08 22 A. Yeah. As soon as the doctor walked in,
12:38:10 23 because I asked him: Can you get these handcuffs

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12:38:14 1 off?

12:38:14 2 Both the nurses -- both the one that I told
12:38:17 3 just leave me alone and then the second lady that
12:38:19 4 came in, I said, can you get these off my arms? My
12:38:22 5 arms are swelling up around the handcuffs. My
12:38:25 6 hands are swelling up around the handcuffs. She
12:38:28 7 said, well, the doctor. The doctor. And I said,
12:38:30 8 okay, well, let's see the doctor.

12:38:35 9 Q. Did the handcuffs cause any lacerations
12:38:40 10 to your wrists?

12:38:41 11 A. Yeah. Both the left hand and the
12:38:43 12 right.

12:38:43 13 Q. Where were those lacerations on your
12:38:45 14 wrists? The front? The back?

12:38:47 15 A. The top and the top.

12:38:52 16 Q. So the record should reflect that
12:38:54 17 you've just pointed to on the top of both of your
12:38:58 18 wrists, towards the inner top portion of your
12:39:02 19 wrists and pointed.

12:39:04 20 A. Yeah.

12:39:04 21 Q. Accurate description?

12:39:08 22 Was any bone exposed?

12:39:12 23 A. No.

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12:39:13 1 Q. Was there any bruising to your wrists
12:39:15 2 that day?

12:39:15 3 A. Oh, yeah. They were swelled up like
12:39:20 4 peaches.

12:39:20 5 Q. How long did the bruising last to your
12:39:24 6 wrists?

12:39:26 7 A. I don't think my hands looked right for
12:39:31 8 probably three months.

12:39:32 9 Q. Did you receive any medical treatment
12:39:35 10 from the doctors at ECMC or the staff at ECMC that
12:39:39 11 day with regard to your wrists?

12:39:45 12 A. No.

12:39:47 13 Q. Did you complain about the swelling --

12:39:49 14 A. Oh, yes.

12:39:50 15 Q. -- and the bruising to your wrists?

12:39:55 16 A. Yeah. When the doctor came in,
12:39:56 17 I talked to the doctor -- I don't know -- probably
12:39:58 18 five minutes. And he said, can you guys take these
12:40:01 19 cuffs off of him? Because I showed him my hands.
12:40:04 20 I showed him they were swelling up. And he said,
12:40:07 21 take these handcuffs off of him.

12:40:09 22 So he took the handcuffs off, and then when
12:40:12 23 I raised my hands and I was looking, I could see

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12:40:15 1 the handcuffs had dug through the skin.

12:40:19 2 And the first thing I said was: Record

12:40:23 3 this. I said, get somebody in here with a camera

12:40:27 4 and take pictures of this. Look what they did to

12:40:30 5 me.

12:40:30 6 Q. Were any photographs taken of your

12:40:32 7 hands at ECMC?

12:40:33 8 A. No. All ECMC did was stand there with

12:40:36 9 their mouth agape, looking at the police like:

12:40:38 10 What do we do? Are we allowed to take pictures of

12:40:41 11 his wrists? Should we take pictures of his wrists?

12:40:46 12 These were the attitudes that you could see

12:40:47 13 nobody knew what to do.

12:40:48 14 Q. Well, did anybody say that, or is that

12:40:50 15 your assumption based on your observations?

12:40:53 16 A. That's my assumption from my

12:40:58 17 observation at that point, knowing that there was

12:41:00 18 already a lawyer waiting in the waiting room,

12:41:02 19 because I had already been informed of that.

12:41:05 20 Let the lawyer come down and take the pictures.

12:41:07 21 Q. Who informed you that a lawyer was

12:41:10 22 present?

12:41:10 23 A. The second nurse.

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12:41:11 1 Q. What did she say?

12:41:12 2 A. She says, there's somebody down here
12:41:14 3 for you in the waiting room trying to get in.

12:41:17 4 Q. Did she identify that person as
12:41:18 5 a lawyer?

12:41:22 6 A. No. She identified him as a tall guy.
12:41:26 7 She said, there's a tall guy down here in the
12:41:28 8 waiting room waiting for you.

12:41:29 9 Q. Did you have any interaction with that
12:41:32 10 person while you were at ECMC?

12:41:33 11 A. No. No. I never saw Jim.

12:41:42 12 Q. Did you receive any other medical
12:41:45 13 treatment while you were at ECMC that morning that
12:41:47 14 you have not mentioned?

12:41:52 15 A. If I did, I don't remember it.

12:42:00 16 Q. The pain to the back of your head,
12:42:02 17 swelling and bruising and pain to your wrists were
12:42:04 18 discussed. Any other injuries that you noticed at
12:42:07 19 that point in time?

12:42:12 20 A. Just the abrasion in the front of my
12:42:17 21 head, but honest to God, I didn't even know I had
12:42:20 22 an abrasion in the front of my head until like
12:42:22 23 I got home and Rachel said, what's wrong with the

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12:42:25 1 front of your head?

12:42:26 2 Q. At some point you were transported from
12:42:29 3 ECMC to central booking downtown?

12:42:33 4 A. Yeah. Yes.

12:42:43 5 Q. When you -- do you have a recollection
12:42:45 6 of arriving to central booking downtown?

12:42:56 7 A. Yeah, I do.

12:43:00 8 Q. When you arrived at central booking,
12:43:02 9 did you walk from the police vehicle into the
12:43:06 10 facility of your own power?

12:43:09 11 A. Yeah. That's -- yeah. Yeah.

12:43:18 12 Q. How much time elapsed from your arrest
12:43:20 13 at central booking, to when your -- strike that.

12:43:31 14 Did you lose consciousness at all while you
12:43:34 15 were at ECMC in the morning?

12:43:35 16 A. I don't know.

12:43:36 17 Q. Did you lose consciousness at any point
12:43:39 18 during your transport from ECMC, to central booking?

12:43:42 19 A. Yeah. I might have fallen asleep,
12:43:44 20 actually.

12:43:51 21 Q. Once you've arrived at central booking,
12:43:53 22 how much time passed from your arrival, to any
12:43:56 23 search of your person?

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12:44:07 1 A. 20 minutes. That's a guess.

12:44:17 2 Q. In that period of time from your
12:44:18 3 arrival, until your person was searched, what were
12:44:24 4 you doing at central booking?

12:44:25 5 A. Okay. This is a narrative. It's the
12:44:30 6 best way I can tell this.

12:44:33 7 I don't know what direction we came in, but
12:44:35 8 there was a steel bench, and I remember coming in
12:44:38 9 and one of the woman policemen said, sit on this
12:44:41 10 steel bench.

12:44:43 11 In front of the steel bench, there was like
12:44:45 12 a bank teller's window, and that room was all glass
12:44:50 13 on the top, like a central control room or something.

12:44:53 14 There was a small hallway off to the left of
12:44:55 15 it in the front, from my perspective sitting on the
12:44:59 16 bench, and there was a cell on the left-hand side.
12:45:03 17 There might have been two cells.

12:45:05 18 Down at the end of that hallway, on the
12:45:08 19 left-hand side, at the end of it, there were two
12:45:11 20 doors. One went up into the control room and
12:45:14 21 the other went into a room I couldn't see, which
12:45:17 22 I eventually learned was where the camera was.

12:45:22 23 So I sat down on that bench when I walked

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12:45:25 1 in.

12:45:26 2 Q. So for the period of time that --
12:45:28 3 strike that.

12:45:29 4 Before your person was searched, were you
12:45:32 5 seated on that steel bench for this entire period
12:45:36 6 of time?

12:45:36 7 A. It took five minutes to get in, and in
12:45:40 8 15 minutes I was sitting there on the bench.

12:45:42 9 Q. Sure. So once you've entered through
12:45:45 10 the doors and you're inside the facility, did you
12:45:47 11 remain seated on that steel bench until you were
12:45:51 12 taken to --

12:45:52 13 A. Yeah, until they took me in the back.

12:45:55 14 Q. -- the search?

12:45:57 15 When you were taken into the back, you were
12:46:01 16 taken down that hallway you've described and in
12:46:04 17 a room towards the left, as --

12:46:07 18 A. Yeah.

12:46:07 19 Q. -- from your vantage point at the steel
12:46:09 20 bench?

12:46:09 21 A. You're walking straight down the
12:46:12 22 hallway, and you make a left to go into this room.

12:46:17 23 Q. Who and how were you brought to that

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12:46:20 1 room down the hallway and towards the left?

12:46:29 2 A. I was sitting there in front of like
12:46:31 3 the bank teller's window, and I don't know where
12:46:36 4 the policewoman went, but I remember the one went
12:46:41 5 over to the door to go into the control room, and
12:46:45 6 you could hear the buzz, so they let her in to go
12:46:48 7 into the control room.

12:46:50 8 I think the other one went into the hall off
12:46:53 9 to the left while I was sitting there on the bench.
12:46:59 10 There was a conversation inside the control room
12:47:01 11 for a minute, and then --

12:47:04 12 Q. Were you able to hear that conversation?

12:47:06 13 A. Yeah.

12:47:08 14 Q. At this point you are seated on the
12:47:11 15 bench and you have been not taken to the other
12:47:14 16 room, correct?

12:47:15 17 A. Yeah. I haven't gone in back there
12:47:17 18 yet.

12:47:17 19 Q. Who took you to the room down the hall
12:47:19 20 and towards the left?

12:47:22 21 A. One of the two policewomen. And to
12:47:27 22 this -- to this day, I haven't seen like a picture
12:47:30 23 of these two different women, so I can't give you

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12:47:35 1 a face with a name.

12:47:37 2 Q. Are you able to provide any physical
12:47:39 3 description of which female officer walked with you
12:47:43 4 to that back room down the hall?

12:47:47 5 A. I think once I described her she looked
12:47:49 6 like you.

12:47:50 7 Q. What do you mean by that?

12:47:52 8 A. She had -- she had straight hair, but
12:47:55 9 I think it was up in a bun. She didn't have a full,
12:47:59 10 round face. I think it was the shorter of the two.
12:48:10 11 I think it was the taller one. I -- I think it was
12:48:13 12 the driver of the car, but I can't put faces with
12:48:20 13 names.

12:48:21 14 Q. Were you walked to that room on your
12:48:23 15 own power?

12:48:24 16 A. It was: Come this way.

12:48:26 17 Q. Were you able to get up off the bench
12:48:28 18 and walk to that room yourself?

12:48:31 19 A. Yeah.

12:48:31 20 Q. Did you require any aid getting off of
12:48:34 21 the bench or walking to that room?

12:48:41 22 A. No.

12:48:42 23 Q. Were you handcuffed the entire period

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12:48:48 1 of time that you entered the police vehicle,
12:48:50 2 entered the facility, and were seated on that
12:48:53 3 steel bench?

12:48:54 4 A. At some point the handcuffs came off,
12:48:57 5 but I don't remember when.

12:48:58 6 Q. Do you know where you were at the time
12:49:00 7 the handcuffs came off?

12:49:01 8 A. I know they were off when I went in for
12:49:04 9 the search and when I was fingerprinted and my
12:49:06 10 picture was took. I'm almost positive they were
12:49:09 11 off then.

12:49:10 12 Q. So at some point the handcuffs were
12:49:12 13 taken off before you were walked to the -- down the
12:49:16 14 hallway --

12:49:16 15 A. Yeah.

12:49:16 16 Q. -- and into that room?

12:49:19 17 A. Yeah.

12:49:19 18 Q. Do you recall who took the handcuffs
12:49:21 19 off you?

12:49:21 20 A. One of the two women officers. That's
12:49:23 21 all I can tell you. I can't remember if it was the
12:49:25 22 short one or the taller girl.

12:49:27 23 Q. And I should ask this foundational

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12:49:29 1 question: At some point the handcuffs were placed
12:49:33 2 back on you at ECMC before you were transported
12:49:36 3 downtown?

12:49:36 4 A. Yeah. You know, I think they might
12:49:43 5 have had -- I can't remember if they had things on
12:49:45 6 my legs or not. Something tells me I had things on
12:49:50 7 my legs at some point, but I can't remember.

12:49:53 8 I'm almost positive at some point in the day
12:49:55 9 I had a belt with the handcuffs through the belt
12:49:59 10 and to the feet.

12:50:01 11 Q. It's your testimony that at some point
12:50:06 12 you had some mechanism on your legs that restricted
12:50:09 13 your movement?

12:50:10 14 A. Yeah. I think at some point they put
12:50:11 15 leg shackles on my legs. Just something tells me
12:50:15 16 they had a belt on me.

12:50:19 17 Q. Do you have a recollection of that
12:50:21 18 being placed on you?

12:50:22 19 A. No. No. It's just something because
12:50:26 20 I remember trying to walk and walking -- my gait
12:50:28 21 was weird, and I don't know whether that was
12:50:32 22 because I hit my head or what.

12:50:34 23 Q. Where do you recall trying to walk and

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12:50:37 1 finding that your gait was --

12:50:41 2 A. When I got out of the police car at
12:50:43 3 central booking, it was hard to -- it was hard --
12:50:46 4 it was hard to move. It was -- I was still
12:50:51 5 hurting.

12:50:51 6 Q. And it is based on your gait being
12:50:55 7 abnormal while walking from the vehicle at central
12:51:07 8 booking into the facility that you base your
12:51:09 9 assumption that you had some type of restraints on
12:51:11 10 your legs?

12:51:12 11 A. Yeah. Yeah.

12:51:15 12 Q. Did you ever observe restraints being
12:51:17 13 placed on your legs?

12:51:18 14 A. No. I don't have a memory of that.

12:51:28 15 Q. Aside from the female officer, did
12:51:31 16 anyone else walk you down the hallway into the room
12:51:34 17 to the left at central booking?

12:51:43 18 A. No. And I think she more summoned me.

12:51:48 19 Q. When you entered that room located down
12:51:53 20 the hallway and to the left, who, if anyone, was
12:51:55 21 present aside from the female officer?

12:51:57 22 A. There were two guys in there.

12:52:02 23 Q. Please describe for me what the two

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12:52:07 1 males present looked like.

12:52:09 2 A. I can't. I met them two guys for two
12:52:12 3 minutes, maybe three.

12:52:19 4 Q. Was your only encounter with those two
12:52:23 5 males within that room?

12:52:38 6 A. Yeah.

12:52:38 7 Q. What happened once you entered that
12:52:40 8 room?

12:52:41 9 A. They said, look this way. So they
12:52:44 10 wanted my attention toward them. There was a --
12:52:47 11 like a place --

12:52:48 12 Q. When you say they, you mean the two
12:52:50 13 males?

12:52:50 14 A. Yeah.

12:52:50 15 Q. Continue.

12:52:51 16 A. There was a place -- a camera was going
12:52:55 17 to take your picture, and they wanted you to look
12:52:57 18 at that and keep looking at that. If you looked
12:53:00 19 down or to your side, they would: No. Just keep
12:53:06 20 looking at the camera.

12:53:10 21 Q. Your photograph was taken first?

12:53:12 22 A. I don't remember.

12:53:13 23 Q. At some point your fingerprints were

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12:53:15 1 taken within that room?

12:53:16 2 A. I think a thumbprint on an electric
12:53:21 3 machine. Maybe they went each print on the
12:53:24 4 electric machine. I can't remember.

12:53:25 5 Q. Do you have a clear recollection of
12:53:26 6 that?

12:53:28 7 A. No, but I'm almost positive they didn't
12:53:30 8 use no ink. I think there was an electric machine
12:53:34 9 there to do it.

12:53:35 10 Q. Do you recall the order with which your
12:53:37 11 photograph and your fingerprints were taken?

12:53:41 12 A. No.

12:53:41 13 Q. At some point was a search of your
12:53:44 14 person performed within that room?

12:53:47 15 A. Yeah.

12:53:48 16 Q. Do you recall if that search occurred
12:53:51 17 prior to your photograph or fingerprints taken?

12:53:54 18 A. I don't know the order. It was either
12:53:57 19 the first thing or the last thing. It wasn't
12:53:59 20 during, in the middle. That's a weird memory.

12:54:07 21 Q. What's weird about it?

12:54:15 22 A. That I can't remember whether it was
12:54:17 23 first or second -- or first or last.

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12:54:20 1 Q. Please describe how the search of your
12:54:23 2 person occurred.

12:54:28 3 A. When we walked into the room, the
12:54:31 4 policewoman was behind us. Again, I don't know
12:54:36 5 whether it was the short one or the tall one.
12:54:39 6 I think it was the taller of the two women. She
12:54:42 7 was behind us.

12:54:46 8 And the one policeman on my right -- or if
12:54:49 9 they were police, I don't know. They weren't in
12:54:51 10 uniform, by the way, these two guys.

12:54:52 11 Q. You're referring to the two males when
12:54:54 12 you say that?

12:54:55 13 A. Yes. Yes, ma'am.

12:54:56 14 The one policeman, the one male on my right
12:54:59 15 said to the policewoman behind me: Where is he
12:55:03 16 going? And she didn't answer him. Then the one
12:55:08 17 policeman or the male on my left said, where is he
12:55:13 18 going to end up? Where is he going? And she
12:55:16 19 didn't answer him again. She didn't answer him.

12:55:20 20 Then the first officer asked again, or the
12:55:23 21 first male, on my right, again, kind of went --
12:55:27 22 looked at the -- the male looked at -- they looked
12:55:31 23 at each other, and he said, where is he -- where is

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12:55:33 1 he going to? Where are you sending him? And she
12:55:36 2 didn't answer him again.

12:55:39 3 And at that point, I don't know if she -- I
12:55:42 4 don't know what she was doing behind me.

12:55:44 5 Q. So my question to you is: Describe the
12:55:46 6 manner in which the search of your person occurred.

12:55:49 7 A. Oh. At that point the first officer
12:55:53 8 relented, and they proceeded to say -- either
12:56:03 9 before or after -- I can't remember which -- he
12:56:05 10 said, okay. Stand here and look at the wall.
12:56:08 11 Okay. Take off your pants -- drop your pants to
12:56:11 12 around your ankles, bend over, spread your cheeks.
12:56:18 13 I don't remember if he said cough.

12:56:25 14 And I think he had -- I think they -- that
12:56:30 15 happened -- that was about -- that whole thing took
12:56:34 16 about 15, 20 seconds.

12:56:35 17 Q. Were you ever completely nude during
12:56:36 18 the course of this search of your person?

12:56:49 19 A. I don't remember. I can't tell you if
12:56:50 20 I had to take my socks off or not. I think they
12:56:53 21 had me pull off my shirt, but I'm not sure.
12:56:57 22 I don't -- it's --

12:56:59 23 Q. Were you ever physically touched in any

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12:57:02 1 manner during this search?

12:57:06 2 A. I don't think so.

12:57:23 3 Q. How many people were present for the
12:57:24 4 search?

12:57:28 5 A. The two men in front of me and the
12:57:32 6 woman policeman behind me.

12:57:33 7 Q. Was there any curtain or screen that
12:57:37 8 separated the female officer from you at the time
12:57:42 9 that you -- that your person was searched?

12:57:47 10 A. There could have been. And I need to
12:57:49 11 explain that.

12:57:49 12 After this was done and he said, put your
12:57:52 13 clothes back on, and I was getting my clothes back
12:57:55 14 on, the first time I noticed her, she was
12:58:02 15 standing -- like the first time I paid any
12:58:04 16 attention to who else was in the room, she was
12:58:06 17 standing in the doorway.

12:58:08 18 Not in the hall, not in the room, but she
12:58:11 19 was standing like right in the -- right in the
12:58:13 20 doorway, and she was looking at me.

12:58:20 21 If the -- this is -- if the two men that
12:58:26 22 were doing the search -- when I turned to look at
12:58:28 23 the wall, which was on my right, and I did that,

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12:58:31 1 and he told me to get dressed, during this process,
12:58:35 2 you weren't allowed to turn around, so I wasn't
12:58:39 3 allowed to turn around to see if she was standing
12:58:41 4 there behind me during the whole time.

12:58:45 5 But as I'm putting on my clothes, you
12:58:49 6 naturally have to move, so I'm putting on my
12:58:52 7 clothes, and when I looked to the left, the first
12:58:54 8 time I glanced to the left -- my left, I seen her
12:58:58 9 in the doorway.

12:59:00 10 If she went outside, I don't know. If she
12:59:03 11 stood there the whole time, I don't know.

12:59:06 12 Q. Your observations and your vantage
12:59:08 13 point was focused on the wall?

12:59:11 14 A. And the two male officers. That
12:59:13 15 whole -- that side of the room.

12:59:14 16 Q. During the portion of your -- of the
12:59:16 17 search of your person?

12:59:17 18 A. Yeah. She could have walked out of the
12:59:27 19 room during the strip search and then came back in
12:59:30 20 after they said, okay, we're done, because the
12:59:32 21 vocal of okay, we're done, would have been easily
12:59:37 22 heard. She was six feet away, if she was outside
12:59:39 23 the room at all.

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12:59:40 1 Q. Did you incur any expenses as a result
12:59:42 2 of your arrest on January 1st, 2017?

12:59:44 3 A. Well, I had to pay Jim.

12:59:45 4 Q. Jim Ostrowski?

12:59:47 5 A. Yeah.

12:59:47 6 Q. How much did you pay Jim?

12:59:49 7 A. \$1500. And had he known it was
12:59:56 8 a felony when we went down there, it probably would
12:59:59 9 have been a whole lot more. We didn't know it was
13:00:01 10 a felony until we got there.

13:00:03 11 Q. Did you pay him 1500 in total, or was
13:00:06 12 that per appearance?

13:00:07 13 A. No. That was all he got.

13:00:09 14 Q. Did Jim send you any receipts or
13:00:11 15 invoices for his legal fee?

13:00:13 16 A. No. No. I've known him 15 years.

13:00:20 17 Q. Did you have any other expenses aside
13:00:23 18 from the fee you paid Jim?

13:00:25 19 A. Well, the hospital sent me a couple
13:00:27 20 bills.

13:00:30 21 And to digress, I think part of my
13:00:35 22 complaint -- when we talked about ECMC earlier,
13:00:38 23 I think part of my complaint was: I'm not paying

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13:00:41 1 any bills. I'm not giving you any money. Collect
13:00:44 2 this from the police department because -- quit
13:00:47 3 sending these bills to me because --

13:00:50 4 Q. Do you still have those bills you
13:00:52 5 received from ECMC?

13:00:53 6 A. If I -- I gave them to the lawyers.

13:00:56 7 Q. When you say lawyers, you mean --

13:00:58 8 A. Yeah. Rupp's got them. Or --

13:01:00 9 Q. Rupp, Baase.

13:01:02 10 A. -- Jim's got them or Rupp's got them.

13:01:04 11 Somebody.

13:01:05 12 Q. Did you ever actually pay any medical
13:01:07 13 bills that you received from ECMC?

13:01:08 14 A. And I never will for that day.

13:01:10 15 Q. Did you incur any medical expenses for
13:01:13 16 any other medical treatment as a result of the
13:01:15 17 incident on January 1st, 2017?

13:01:17 18 A. Not that I've paid. I don't have any
13:01:19 19 money to pay medical bills.

13:01:21 20 Q. Well, have you gotten bills or invoices
13:01:23 21 related to any other medical treatment in
13:01:25 22 connection with this incident?

13:01:30 23 A. I want to truthfully answer, I don't

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13:01:34 1 know. I don't know.

13:01:34 2 Q. Have you ever filled out what's called
13:01:36 3 an application for no-fault benefits?

13:01:44 4 A. I can't remember if I've ever done that
13:01:49 5 or not.

13:01:49 6 Q. Is there any reason why you would have
13:01:52 7 not filled out an application for no-fault benefits?

13:01:54 8 A. I don't know what that is.

13:01:55 9 Q. Okay. That's fair.

13:02:01 10 Have you ever been involved in a motor
13:02:04 11 vehicle accident prior to January 1st, 2017?

13:02:06 12 A. As the driver?

13:02:07 13 Q. Have you been involved in a motor
13:02:09 14 vehicle accident at all prior to January 1st, 2017?

13:02:13 15 A. Not as -- not as a driver. I was
13:02:16 16 a passenger in a car when I was 18 that went off
13:02:25 17 Old Colerain Road. Gus Winters was driving the
13:02:28 18 car. Went over the embankment in an Opel. I was
13:02:33 19 the only one come out of that without a scratch.

13:02:36 20 I was in a car that went off the road in
13:02:41 21 Indiana. I don't remember who the guy was that was
13:02:43 22 driving that vehicle. But I came out of that one
13:02:48 23 without a scratch.

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13:02:54 1 And Rachel and me and the three kids were
13:02:56 2 stopped at an intersection, probably around 2015,
13:03:00 3 and an automobile went out of control and stopped
13:03:03 4 right in front of her car, put a hole in her
13:03:08 5 bumper -- she was driving a Windstar then -- about
13:03:10 6 as big as a quarter. There were no injuries to
13:03:13 7 anybody.

13:03:14 8 So the answer is: I can remember three
13:03:16 9 times I've been in a car wreck in my life, and
13:03:20 10 I never got hurt.

13:03:22 11 Q. Have you ever been involved in any
13:03:23 12 other type of accident that may have caused
13:03:25 13 physical injury to you?

13:03:33 14 A. No.

13:03:33 15 Q. Did you play any sports growing up?

13:03:39 16 A. No.

13:03:39 17 Q. Have you ever suffered a concussion?

13:03:53 18 A. I was on a Huffy Rail bicycle when
13:03:56 19 I was about 11. The front tire went into a storm
13:04:00 20 drain, and the bike flipped, and I was out until
13:04:04 21 I woke up in the hospital. I think I might have
13:04:08 22 been concussed when I was 11.

13:04:17 23 Playing poker when I was about 17 years old,

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13:04:20 1 I got hit in the head with a two-by-four by a kid
13:04:23 2 by the name of Billy Leibish. Lost consciousness
13:04:26 3 for about a half hour.

13:04:28 4 Q. When was that?

13:04:28 5 A. I was about 17 years old, 18 years old.
13:04:39 6 Went to the hospital. They sent me home. My mom
13:04:42 7 came and got me, I think. They sent me home.

13:04:45 8 Other than that, not in the last 40 years.

13:04:47 9 Q. Have you ever suffered any injuries
13:04:49 10 when you were doing any of your construction or
13:04:50 11 laborer work?

13:04:56 12 A. No.

13:04:56 13 Q. Are you aware of any testimony that you
13:04:58 14 have given aside from your 50-h in June of 2017?

13:05:02 15 A. No.

13:05:10 16 Q. Aside from that 50-h in June of 2017,
13:05:14 17 have you given any other statements about this
13:05:15 18 incident to any other City of Buffalo employee?

13:05:20 19 A. I don't think so.

13:05:25 20 Q. How long did the pain to the back of
13:05:27 21 your head last?

13:05:32 22 A. Oh, I digress to the last question.
13:05:36 23 Could you repeat the last question?

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13:05:37 1 Q. The one about statements to City of
13:05:40 2 Buffalo employees?

13:05:40 3 A. Yeah, city employees. I caused to be
13:05:43 4 mailed to Internal Affairs a complaint.

13:05:45 5 Q. What do you mean by you caused to be
13:05:46 6 mailed a complaint to Internal Affairs?

13:05:50 7 A. I took a copy of the complaint in
13:05:56 8 federal court, I put a cover letter on that copy,
13:06:00 9 and I sent it to Internal Affairs.

13:06:01 10 And I said I didn't think there was much
13:06:04 11 more that needed to be said, other than what was
13:06:07 12 contained within the complaint that they could --
13:06:10 13 all they had to do was look at the complaint and
13:06:12 14 they could figure out what my Internal Affairs
13:06:14 15 complaint about the police officer's conduct would
13:06:19 16 be.

13:06:19 17 And all I wanted to know was when they
13:06:24 18 started their investigation. I'd like you to tell
13:06:26 19 me when you start your investigation. And I mailed
13:06:28 20 it, so I caused the post office to deliver it.

13:06:30 21 Q. Understood. When did you mail that?

13:06:32 22 A. I can't remember that.

13:06:34 23 Q. Do you recall what year?

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13:06:38 1 A. It was last year.

13:06:39 2 Q. So at some point in 2019?

13:06:41 3 A. Or '18. '18 or '19. Long years.

13:06:48 4 Q. Do you have any record showing that you
13:06:49 5 mailed it?

13:06:50 6 A. I'm pretty sure somewhere in my house
13:06:54 7 or in the office or somewhere there's a receipt
13:06:58 8 with a ZIP code deliverable. I know I mailed it
13:07:06 9 from the post office downtown here behind City
13:07:10 10 Hall, so there would be a tracking number on there.

13:07:13 11 Whether you could still find it on the --
13:07:17 12 but I think they've since acknowledged they have
13:07:20 13 it, but they didn't acknowledge they had ever
13:07:23 14 started an investigation.

13:07:24 15 Q. Why do you think that they acknowledged
13:07:26 16 they had it?

13:07:30 17 A. Fairly recently I was told that
13:07:41 18 Internal Affairs had communicated with my attorney.

13:07:46 19 Q. Who told you that?

13:07:48 20 Well, let me preface this by saying I'm not
13:07:52 21 inquiring about conversation you had with your
13:07:53 22 attorney.

13:07:53 23 A. I gotcha.

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13:07:55 1 Q. So if that is that --

13:07:55 2 A. I understand.

13:07:56 3 Q. -- I'm not trying to ask that.

13:07:57 4 A. I understand.

13:07:58 5 Q. But did anybody from the police

13:08:00 6 department or Internal Affairs contact you with

13:08:02 7 regard to your letter?

13:08:03 8 A. Never.

13:08:06 9 Q. And, again, I'm not trying to breach

13:08:08 10 that, but I just want to get a handle on this.

13:08:11 11 Is it at some point you were informed someone from

13:08:14 12 Internal Affairs has contacted your attorneys?

13:08:17 13 A. Yeah.

13:08:17 14 Q. Do you know when you were informed of

13:08:19 15 that?

13:08:24 16 A. I'm going to say within the last six

13:08:26 17 weeks. After the WIVB broadcast. And I don't know

13:08:34 18 what day that was on either.

13:08:48 19 Q. Did you have a primary care physician

13:08:49 20 on January 1st, 2017?

13:08:53 21 A. No. The first -- no, I'm not sure

13:08:57 22 I did. But when I went on like the 10th to see

13:09:00 23 a doctor, that was -- they called her my primary,

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13:09:06 1 and I had never seen the woman before. She's
13:09:09 2 a young girl. And I never saw her after that
13:09:12 3 either. That was at 1500 Broadway.

13:09:15 4 Q. Did you have a doctor, prior to this
13:09:19 5 incident, that you had most recently seen?

13:09:27 6 A. I can't remember. I think I was going
13:09:31 7 to 1500 Broadway before I went back to 1500 Broadway
13:09:35 8 on like the 10th of January of '17, but I think my
13:09:39 9 primary had left, and I had to get a new primary.
13:09:44 10 I think I had been attending that clinic.

13:09:47 11 Q. Prior, so at some point in the year of
13:09:50 12 2016, you had attended --

13:09:52 13 A. Yeah.

13:09:52 14 Q. -- or received treatment at that --

13:09:55 15 A. I think so, yeah.

13:09:56 16 Q. The same clinic located at
13:09:57 17 1500 Broadway?

13:09:59 18 A. Yeah. It was at Broadway and Bailey
13:10:02 19 for a while. It was St. Vincent's. And then they
13:10:06 20 opened at 1500.

13:10:11 21 Q. How long did the pain to your head
13:10:13 22 last?

13:10:18 23 A. From when the police car crashed into

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13:10:20 1 me on January 1st, 2017, is that what you're asking
13:10:25 2 me?

13:10:25 3 Q. How long did you experience pain to the
13:10:26 4 back of your head as a result of this incident?

13:10:33 5 A. It took about three days for me to
13:10:37 6 just -- to not feel like bad. It took about three
13:10:43 7 days for my head to stop, you know.

13:10:46 8 Q. Do you have any scars or marks to any
13:10:50 9 parts of your body as a result of the incident on
13:10:52 10 March -- not March -- January 1st, 2017?

13:10:56 11 A. I have little like dots on my wrists
13:10:58 12 where the scabs were, like scarring, but that's --
13:11:03 13 you know, every scar's got a tale, so on a guy,
13:11:08 14 a scar doesn't mean a whole lot.

13:11:10 15 Q. So is it fair to say you may have had
13:11:12 16 scars on your wrists prior to January 1st, 2017?

13:11:15 17 A. Not where these scars are.

13:11:22 18 Q. Can you point out the scars that you're
13:11:25 19 referring to?

13:11:26 20 So the record should reflect you held out
13:11:28 21 your right hand?

13:11:29 22 A. Yeah.

13:11:29 23 Q. Your right wrist.

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13:11:30 1 A. You see that? Like you're going to
13:11:33 2 think it's a line, but that's right where that --
13:11:35 3 that's right where that handcuff was.

13:11:39 4 And there's little -- you see the white
13:11:43 5 right there? You can -- you can just see it.
13:11:47 6 That's a scar. That's a scar from where that
13:11:50 7 handcuff bit into me.

13:11:52 8 Q. So the record should reflect that
13:11:53 9 you've just pointed to the top of your right wrist?

13:11:55 10 A. Yeah. There's a scar about a half inch
13:11:58 11 long, and it's a little white -- a little whiter,
13:12:01 12 in deep, than it is on either side. It's a very
13:12:04 13 small scar.

13:12:07 14 Q. Before I stopped you, you were
13:12:09 15 beginning to hold out your left hand.

13:12:12 16 A. Yes. And the same thing over here.
13:12:16 17 But that one's right there. That one's right here.

13:12:19 18 Q. So the record should reflect that
13:12:21 19 you've pointed to the top portion of your wrist,
13:12:28 20 towards -- almost towards the inside of your arm;
13:12:31 21 is that fair?

13:12:32 22 MR. DAVENPORT: Yes.

13:12:35 23 THE WITNESS: And they're tiny.

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13:12:37 1 BY MS. HUGGINS:

13:12:38 2 Q. Have you put anything -- an ointment or
13:12:40 3 anything on your wrists to try to reduce any
13:12:43 4 scarring?

13:12:46 5 A. No.

13:12:55 6 Q. How long did the bruising to your
13:12:57 7 wrists last?

13:13:07 8 A. It took a good three months before
13:13:11 9 my -- my wrists started to have the resemblance
13:13:17 10 that they have now. It took about three months.

13:13:19 11 Q. You had bruising for a period of three
13:13:21 12 months?

13:13:21 13 A. I had swelling. I had swelling on both
13:13:25 14 sides of this -- this crack where the scar was
13:13:28 15 where I showed you, I had swelling on both sides of
13:13:31 16 that for months.

13:13:32 17 Q. How long did you experience bruising to
13:13:33 18 your wrists?

13:13:39 19 A. Discoloration? When you say bruising,
13:13:41 20 I think of like black and blue or red. When you
13:13:43 21 say swelling -- you can have swelling without the
13:13:47 22 color changing.

13:13:47 23 Q. So you've just described that you had

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13:13:49 1 swelling for approximately three months.

13:13:51 2 A. Yeah.

13:13:51 3 Q. How long did you experience bruising to
13:13:54 4 your wrists?

13:13:56 5 A. Ten days at most before the color came
13:14:01 6 back.

13:14:14 7 Q. What was the first medical treatment,
13:14:15 8 if any, did you receive after the January 1st, 2017
13:14:20 9 incident?

13:14:20 10 A. When I went to 1500. It took me that
13:14:26 11 many days to get in.

13:14:27 12 Q. Approximately ten days later?

13:14:29 13 A. Yeah. It might have been a week. But
13:14:31 14 it took that long to get in. We called them right
13:14:33 15 away, but they said, you can't see the doctor, and
13:14:35 16 you've got to have a new primary because your old
13:14:38 17 primary left, and it will be -- okay. Give me the
13:14:41 18 first available.

13:14:43 19 Q. What was the name of that doctor you
13:14:45 20 saw?

13:14:52 21 A. I think her name is in the 50-h.

13:14:54 22 Q. Is that that younger female doctor --

13:14:56 23 A. Yeah.

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13:14:56 1 Q. -- you've referred to earlier?

13:14:58 2 A. Yeah. Yeah.

13:14:59 3 Q. And you mentioned you never returned

13:15:01 4 or saw --

13:15:01 5 A. I never saw her after that, yeah.

13:15:04 6 I only saw her one time, I think.

13:15:06 7 Q. What medical treatment was provided for
13:15:08 8 you when you saw the doctor at 1500 Broadway?

13:15:14 9 A. She said, if it hurts, put ice on it.
13:15:17 10 She said, you can take over-the-counter painkillers
13:15:27 11 for it.

13:15:29 12 And she said -- I said, can you give me
13:15:32 13 a referral to a neurologist? Because I could see
13:15:34 14 that was where this was going, because I could feel
13:15:37 15 that they don't feel the same.

13:15:41 16 And I don't remember if she gave me
13:15:43 17 a neurologist's referral or not, but I know
13:15:49 18 I attempted to make an appointment with Dent
13:15:52 19 Neurology down on Harlem Road.

13:15:55 20 Q. Do you know if any diagnostic testing,
13:15:57 21 an MRI, an x-ray, a CAT scan, any of that was
13:16:02 22 performed when you sought treatment at 1500 Broadway?

13:16:04 23 A. Not that I remember.

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13:16:06 1 Q. Do you know if you received any diagnosis
13:16:08 2 of any kind when you attended 1500 Broadway?

13:16:10 3 A. Not that I remember.

13:16:13 4 Q. When did you attempt to make an
13:16:15 5 appointment at Dent?

13:16:23 6 A. I think I had one for February, the
13:16:27 7 next month.

13:16:29 8 Q. In the year 2017?

13:16:31 9 A. Yeah.

13:16:31 10 Q. Did you receive any medical treatment
13:16:33 11 from Dent?

13:16:34 12 A. No.

13:16:34 13 Q. Why not?

13:16:35 14 A. They wanted \$200 cash to see me, to let
13:16:39 15 me walk in the door. And I asked them: Well, are
13:16:41 16 you going to be able to do anything for me if I give
13:16:44 17 you \$200? And they said, well, we'll set you up
13:16:47 18 with a neurologist and you'll have to come back
13:16:50 19 again.

13:16:51 20 That's going to be the initial patient
13:16:52 21 intake. No, you're probably not going to get any
13:16:56 22 care that day. And they asked what was wrong, and
13:16:58 23 I told them.

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13:16:58 1 Q. Was that conversation over the phone or
13:17:00 2 in person?

13:17:00 3 A. Over the phone. And they asked what
13:17:03 4 was wrong, and I told them, and they said, well,
13:17:05 5 this is probably going to be an insurance claim, so
13:17:07 6 you're definitely going to have to pay cash if you
13:17:09 7 don't have any insurance of your own.

13:17:11 8 Q. What did you identify to Dent as your
13:17:13 9 complaints?

13:17:13 10 A. I told them I had a handcuff injury.

13:17:26 11 Q. Did you seek any other medical
13:17:30 12 treatment with regard to the January 1, 2017
13:17:35 13 incident, aside from what we've just discussed at
13:17:38 14 1500 Broadway and your attempted appointment at
13:17:40 15 Dent?

13:17:45 16 A. Catholic Health has a Family Medical
13:17:48 17 Practice. I can't remember the name of the street
13:17:55 18 that it's on, but it's a few blocks down from OLV.
13:18:03 19 See, I don't drive, so I don't know the name of
13:18:05 20 streets. But that became my primary physician.

13:18:14 21 Over the course of care with my primary
13:18:16 22 physician for whatever ails a 57-year-old man,
13:18:21 23 I think I may have mentioned my arms, but I don't

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13:18:24 1 think that was his primary concern of my care.

13:18:28 2 Q. Did you describe the injuries you claim
13:18:30 3 from the January 1st, 2017 incident to any medical
13:18:36 4 providers, aside from the doctor at 1500 Broadway
13:18:40 5 and the intake person at Dent?

13:18:43 6 A. No.

13:18:44 7 Q. Why not?

13:18:53 8 A. I just put it down to lack of
13:18:54 9 opportunity.

13:18:54 10 Q. What do you mean by that?

13:18:55 11 A. You have to have money to see
13:18:57 12 a neurologist. You have to have money to go into
13:19:00 13 Dent or you've got to have an Obama card or you've
13:19:03 14 got to have some kind of insurance card, and I didn't
13:19:05 15 have any insurance in January of 2017 or February
13:19:08 16 of '17 or March of '17.

13:19:09 17 Q. Were you ever given a diagnosis by
13:19:11 18 any doctor at any point or a referral by a doctor
13:19:15 19 at any point saying that you needed to see
13:19:17 20 a neurologist to address your concerns relating
13:19:20 21 to the January 1st, 2017 incident?

13:19:22 22 A. I suspect that that young girl doctor
13:19:27 23 that I saw at 1500 the second week of January or

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13:19:31 1 the first -- the 10th of January, I think she gave
13:19:35 2 me a referral and that's why I reached out to Dent.

13:19:37 3 Because to get into a normal neurologist
13:19:42 4 without any money or insurance was going to be
13:19:44 5 a problem, but the longer I waited to see
13:19:47 6 a neurologist, the more concerned I was because
13:19:50 7 it was hard to move my thumb.

13:19:56 8 Q. Have you received any medical treatment
13:19:58 9 at all from any neurologist?

13:20:01 10 A. No.

13:20:06 11 Q. Aside from 1500 Broadway and the
13:20:09 12 Catholic medical practice that you've referenced,
13:20:11 13 have you received medical treatment from anyone
13:20:13 14 else in relation to the January 1st, 2017 incident?

13:20:16 15 A. No.

13:20:17 16 Q. And it's your testimony that what has
13:20:21 17 prevented you is cost, not denial of any medical
13:20:25 18 treatment itself?

13:20:34 19 A. That, coupled with one other thing.

13:20:36 20 Q. What has prevented aside from cost?

13:20:40 21 A. That, coupled -- resources are the
13:20:43 22 primary reason, but it's also coupled with the fact
13:20:46 23 that when you call and you say, I want to set up --

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13:20:51 1 I want to see somebody about my wrists, they ask
13:20:54 2 you: Well, okay. Is this a work-related injury?
13:20:56 3 No. Well, was it an injury? Yes. What happened
13:20:59 4 to your wrists? Well, I got hit by a police car,
13:21:04 5 I got arrested, and they put the handcuffs on so
13:21:07 6 tight that they injured me.

13:21:08 7 As soon as you say that, the conversation
13:21:11 8 changes.

13:21:11 9 Q. What do you mean by that?

13:21:19 10 A. Not everybody wants to involve
13:21:22 11 themselves with the state, the police department.
13:21:29 12 Not everybody, not every practitioner wants to jump
13:21:33 13 in.

13:21:36 14 Q. Has any medical provider explicitly
13:21:39 15 refused to evaluate or provide any treatment as
13:21:42 16 a result of your description of how you suffered
13:21:45 17 the injury?

13:21:51 18 A. The young doctor at 1500, ten days
13:21:54 19 after I had the injury, when I spoke to her while
13:22:00 20 she was interviewing me and caring for me and
13:22:04 21 treating me, she said, let me pull up the records
13:22:07 22 from ECMC.

13:22:10 23 So she pulled up the records from ECMC, and

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13:22:13 1 she said to me: What you're telling me doesn't --
13:22:23 2 doesn't match what's in the file here. And I said,
13:22:27 3 what do you mean? And she said, well, it says here
13:22:31 4 you jumped on a police car and that you were arrested
13:22:36 5 for it and you were taken to the CPEP unit.

13:22:39 6 And what you're telling me that you had this
13:22:42 7 injury to your wrists because of the handcuffs, it
13:22:47 8 doesn't -- it doesn't -- it doesn't jive with this.

13:22:50 9 Q. Do you believe that ECMC medical
13:22:51 10 records are inaccurate with regard to the
13:22:54 11 January 1st, 2017 incident?

13:22:55 12 A. I'm not an expert in medical records.
13:22:57 13 I don't know. But I know there is one error that
13:23:00 14 is claimed in the record at ECMC.

13:23:03 15 Q. What error is that?

13:23:05 16 A. There's a description of some type of
13:23:16 17 suicidal inclination about going to a hotel and
13:23:22 18 starving oneself to death or drinking oneself to
13:23:26 19 death. That's at the bottom of a page on the
13:23:29 20 record. And when you go to the next page, on the
13:23:31 21 top, it says, the prior entry was written in error.
13:23:36 22 It was entered in error.

13:23:37 23 So I know there's one error there.

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13:23:42 1 Q. Have you attended any physical therapy
13:23:45 2 as a result of the January 1st, 2017 incident?

13:23:52 3 A. No.

13:23:52 4 Q. Have you sought the services or seen
13:23:55 5 a chiropractor as a result of the January 1st, 2017
13:23:58 6 incident?

13:23:59 7 A. No.

13:24:01 8 Q. Have you taken any pain medication at
13:24:04 9 any point as a result of the January 1st, 2017
13:24:06 10 incident?

13:24:07 11 A. No. I don't take pills of any kind.

13:24:20 12 Q. At any point are you aware of any
13:24:23 13 diagnostic testing done on you, aside from the
13:24:28 14 tests at ECMC that morning and anything you may
13:24:30 15 have received at 1500 Broadway?

13:24:34 16 A. Not that I remember.

13:24:36 17 Q. Have we discussed all medical providers
13:24:39 18 that you have seen after this January 1st, 2017
13:24:44 19 incident?

13:24:44 20 A. I hope so.

13:24:46 21 Q. Me too. That's why I'm asking you.

13:24:48 22 Is there any other doctor or therapist or
13:24:55 23 chiropractor, whatever you want to categorize them,

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13:24:58 1 whom you've sought to try to alleviate or address
13:25:01 2 any injuries you have suffered as a result of the
13:25:04 3 January 1st, 2017 incident?

13:25:05 4 A. No.

13:25:19 5 Q. When was the last time you saw
13:25:21 6 a medical provider with regard to the January 1st,
13:25:24 7 2017 incident?

13:25:38 8 A. I think I pretty well give up trying to
13:25:42 9 get a doctor to fix what ails me on my wrists.

13:25:49 10 At the OLV clinic, when my primary at the
13:25:51 11 OLV clinic out by OLV, when he said to me that:
13:25:56 12 Jimmy, I think there's other things. You're going
13:26:02 13 to have kidney stones. He said, there's other
13:26:05 14 things we've got to worry about with you other than
13:26:08 15 your wrists. And I think, you know, there's more
13:26:11 16 important things that we should pay attention to.
13:26:15 17 Learn to live with something. I said, okay.
13:26:17 18 I think that's kind of when I said, all right.

13:26:18 19 Q. When did you stop receiving medical
13:26:20 20 treatment for either the pain to your head or the
13:26:23 21 issues you've described with your wrists?

13:26:33 22 A. When did I --

13:26:35 23 Q. Stop.

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13:26:36 1 A. Yeah. As soon as I got my new primary
13:26:41 2 at the OLV clinic, Our Lady of Victory, and the
13:26:47 3 doctor told me -- he said, well, we can't cure
13:26:52 4 everything. It's going to take me months to get
13:26:54 5 you in to see a neurologist, and I think you should
13:26:58 6 see a urologist before a neurologist, because I'm
13:27:01 7 57, and --

13:27:01 8 Q. Due to the kidney stones?

13:27:03 9 A. Yeah. I have stage 3 kidney disease.

13:27:10 10 Q. Do you recall when that occurred that
13:27:14 11 you were told this?

13:27:18 12 A. I'm going to say about a year after.
13:27:20 13 So it would have been January, February of 2018.
13:27:28 14 It was kind of like: Well, let's worry about
13:27:33 15 what's happening today.

13:27:35 16 Q. Since that conversation in 2018, have
13:27:40 17 you scheduled or sought any treatment for any
13:27:44 18 issues related to the January 1st, 2017 incident?

13:27:46 19 A. No.

13:27:47 20 Q. Do you have any plans to do so in the
13:27:50 21 future?

13:27:53 22 A. Well, if I had a pile of money, I'd
13:27:56 23 probably call a neurologist and say, give me your

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13:27:59 1 first available, and have him at least look at my
13:28:03 2 wrists so he could hear my complaints to find out
13:28:07 3 if there's anything he can do.

13:28:09 4 Q. Have you taken any steps or --

13:28:11 5 A. No.

13:28:11 6 Q. -- contacted anyone?

13:28:12 7 A. No. That pile of money ain't fell out
13:28:15 8 of the sky.

13:28:23 9 Q. Did the January 1st, 2017 incident
13:28:26 10 cause you to miss any actual time working as
13:28:32 11 a landlord?

13:28:40 12 A. It added time. It made things longer.

13:28:42 13 Q. Were you confined to your home or to
13:28:44 14 a bed for any period of time, as a result of the
13:28:48 15 January 1st, 2017 incident?

13:28:49 16 A. Them first two or three days, I didn't
13:28:51 17 leave the house. And I can tell you, this kind of
13:28:55 18 kills like six birds with one stone. You asked
13:28:59 19 earlier about when we first -- when we first knew
13:29:05 20 that Mike Wolfe had left. After I got home that
13:29:10 21 night, the next day, which would have been January
13:29:14 22 2nd, I went outside, and I walked around, and
13:29:18 23 Mike's door was ajar.

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13:29:20 1 But I didn't want to -- I was still trying
13:29:23 2 to -- my head's still ringing from the day before.
13:29:26 3 I'm like: I'm not even going to talk to Mike.
13:29:30 4 I don't want to deal with that too. Because he
13:29:32 5 always had an issue at some point.

13:29:34 6 So the next day, which would have been the
13:29:36 7 3rd, I did the same thing. I did the walk-around.
13:29:40 8 Didn't do anything. Didn't do any work those two
13:29:43 9 days. But it was the 3rd that I said, the door's
13:29:47 10 been open all night long. The apartment door.

13:29:51 11 Q. To Mike's unit?

13:29:53 12 A. Yeah. I said, the door's been open
13:29:55 13 that same six inches for two days. I can't leave
13:29:59 14 buildings open. So that's when I went up on the
13:30:02 15 porch, on the 3rd, and knocked on the door and
13:30:05 16 said, Mike? Mike? Mike?

13:30:07 17 The apartment's empty. I go in. I got
13:30:11 18 possession of the real estate. So then I changed
13:30:14 19 the lock on the door, because there was nothing of
13:30:17 20 his that belonged in there -- or nothing of his
13:30:20 21 there. He had gone completely.

13:30:23 22 And I had to change the lock on the door
13:30:25 23 because there was a key in the lock that was busted

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13:30:28 1 off. I still got that lock with that broke-off key
13:30:37 2 in there. And the door had been busted down.

13:30:43 3 Q. Have you filled out any applications
13:30:46 4 for any type of benefits with regard to your
13:30:49 5 injuries that you suffered on January 1st, 2017?

13:30:54 6 A. No.

13:30:57 7 Q. Have you filed for any disability
13:31:00 8 benefits?

13:31:02 9 A. No.

13:31:06 10 Q. At the time of this incident on
13:31:11 11 January 1st, 2017, did you have any health
13:31:13 12 insurance?

13:31:13 13 A. No.

13:31:15 14 Q. Since this incident have you obtained
13:31:17 15 any health insurance?

13:31:21 16 A. I think I got Obamacare right now.
13:31:27 17 Whatever that is.

13:31:30 18 Q. Were there any hobbies or activities,
13:31:33 19 aside from what you described, and your landlord
13:31:36 20 duties, that you were prevented from doing as
13:31:38 21 a result of the January 1st, 2017 incident?

13:31:40 22 A. I put on this dress shirt this morning
13:31:42 23 and I couldn't snap that button on my left wrist.

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13:31:47 1 I couldn't -- I couldn't -- I spent 20 minutes
13:31:50 2 trying to get that button snapped, and every time
13:31:53 3 I did it, this side over here hurt.

13:31:56 4 I'm not trying to be loud. I promise.

13:31:59 5 But that is just the kind of the stuff that
13:32:07 6 happens.

13:32:08 7 Q. Difficulty in terms of using -- closing
13:32:10 8 a button or --

13:32:11 9 A. You'll be doing -- you'll be doing the
13:32:14 10 most minute thing. The thing that you don't think
13:32:16 11 it's going to -- you know, I can do this. I've
13:32:19 12 been doing this all my life. And you're like: Ow,
13:32:24 13 ow, ow for 20 minutes and finally go: Rachel, will
13:32:28 14 you button my shirt for me? It's ludicrous.

13:32:31 15 You're painting an apartment because you
13:32:34 16 have to paint the apartment before you can rent it
13:32:36 17 to the next guy, and you're drawing a line, and
13:32:39 18 you've gone eight inches, and your sash tool falls
13:32:45 19 out of your hand. It just falls out of your hand.

13:32:47 20 You're like: Holy shit. Now you've got to
13:32:50 21 get down off the ladder. You've got to wipe the
13:32:53 22 brush off. It takes another 20 minutes.

13:32:55 23 Q. Have you hired anyone to help you do

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13:32:57 1 any household activities as a result of this
13:32:59 2 incident?

13:32:59 3 A. Household activities, no. The
13:33:02 4 biggest -- maybe I answered that too fast. The
13:33:03 5 biggest expense I've had was the roof, because
13:33:07 6 I couldn't trust myself on it. I couldn't use the
13:33:09 7 trowel on Rachel's porch. That was \$1100.

13:33:15 8 I couldn't even put the backing up because
13:33:18 9 I couldn't drive the nails hard enough. I couldn't
13:33:21 10 even put the backing up for the stucco guy. When
13:33:24 11 he got there, he had to take the backing off and
13:33:26 12 redo it because I couldn't get the nails in far
13:33:29 13 enough.

13:33:29 14 Q. In terms of those landlord duties that
13:33:34 15 you've described, the roofing and the stucco, you
13:33:36 16 hired contractors to assist?

13:33:37 17 A. I paid somebody.

13:33:44 18 Q. Do you have any restrictions from any
13:33:46 19 of your doctors with regard to any activities you
13:33:50 20 are allowed to perform?

13:33:51 21 A. No. Not that I'm aware of.

13:33:55 22 Q. Have you ever suffered any prior
13:33:57 23 injuries to either of your wrists or hands?

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13:33:59 1 A. No.

13:34:04 2 Q. Have you taken any vacations since
13:34:06 3 January 1st, 2017?

13:34:19 4 A. No.

13:34:36 5 MS. HUGGINS: Off the record.

13:39:27 6 (A recess was then taken.)

13:39:32 7 BY MS. HUGGINS:

13:39:33 8 Q. Have you sought treatment from any
13:39:35 9 mental health professional or counselor as a result
13:39:38 10 of the January 1st, 2017 incident?

13:39:40 11 A. Not yet.

13:39:41 12 Q. Do you have plans to do so?

13:39:45 13 A. No formal plans. I haven't decided
13:39:47 14 what to do there.

13:39:53 15 Q. What, if any, symptoms or issues have
13:39:57 16 you experienced, in terms of your mental health,
13:40:00 17 that have caused you to consider doing that in the
13:40:03 18 future?

13:40:10 19 A. I still can't believe that people are
13:40:12 20 lying. It just -- I can't fathom lying this
13:40:21 21 consistently for this long in their official
13:40:25 22 capacities.

13:40:26 23 Q. Have you ever received mental health

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13:40:28 1 treatment or counseling prior to January 1st, 2017?

13:40:33 2 A. In what time frame?

13:40:34 3 Q. Your life.

13:40:39 4 A. Not that I remember.

13:40:41 5 Q. Is it possible that you may have

13:40:44 6 received such treatment that --

13:40:44 7 A. Yeah, but I might have forgot.

13:40:45 8 Q. -- you don't remember?

13:40:46 9 A. But I might have forgot.

13:41:18 10 Q. Aside from the complaints that you sent

13:41:22 11 directly to ECMC and your cover letter to the

13:41:26 12 police department Internal Affairs Division, have

13:41:29 13 you written any other complaints or information

13:41:34 14 with regard to this incident to any other

13:41:36 15 individuals?

13:41:37 16 A. There might have been a mention of it

13:41:39 17 on social media after the WIVB report, but I really

13:41:47 18 have stayed away from mentioning this on social

13:41:51 19 media at all.

13:41:53 20 Q. The possible mention of it on social

13:41:55 21 media, would that be a post that you yourself

13:41:58 22 caused?

13:41:58 23 A. Or somebody IM'd me and said, I saw

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13:42:01 1 this on WIVB. What's going on here?

13:42:04 2 Q. So perhaps like a direct conversation
13:42:06 3 that you had with somebody?

13:42:07 4 A. Or somebody posed a question, and
13:42:09 5 I said, well, it's public now, and posted the WIVB
13:42:13 6 story.

13:42:14 7 Q. Did you post that to your own account?

13:42:17 8 A. I probably would have, after getting
13:42:21 9 like three or four people saying, wow. What
13:42:25 10 happened here?

13:42:25 11 Q. What social media accounts do you have?

13:42:27 12 A. Only on Facebook.

13:42:28 13 Q. What is your user name on Facebook?

13:42:30 14 A. There's two. There's Jimmy Kistner and
13:42:34 15 there's James Kistner.

13:42:35 16 Q. Do you spell Jimmy with a Y?

13:42:38 17 A. Yeah.

13:42:42 18 There is Jimmy 4 Fillmore -- Jimmy 4 Fillmore
13:42:53 19 on Facebook. Jimmy 4 Fillmore on Facebook, and
13:43:04 20 then there is a jimmykistner4fillmore.com. There
13:43:14 21 is a dot com that's not on Facebook.

13:43:17 22 And that's it. I don't tweet. I don't do
13:43:21 23 anything like that.

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13:43:22 1 Q. At the time of this incident, you were
13:43:23 2 not attending any school or occupational training,
13:43:29 3 correct?

13:43:30 4 A. No, I was not.

13:43:33 5 Q. Aside from the expenses that you have
13:43:36 6 described previously, did you lose any income as
13:43:40 7 a result of this incident?

13:43:48 8 A. No.

13:43:48 9 Q. Aside from the time you were at
13:43:52 10 McDonald's on Niagara Street, have you had any
13:43:54 11 other interaction with any members of the Buffalo
13:43:58 12 Police Department since this incident?

13:44:01 13 A. About six weeks after the 1st of
13:44:04 14 January, before the 50-h hearing, so it was after
13:44:10 15 January 1st, but before, somebody kicked down the
13:44:13 16 back door of my room in the back of 33.

13:44:18 17 I was over at Rachel's. I don't think I had
13:44:27 18 gone there for about two days, so we didn't know
13:44:29 19 exactly what day it happened, but we called the
13:44:32 20 police.

13:44:33 21 Earl was there on that day when we
13:44:37 22 discovered somebody had kicked down the back door
13:44:39 23 when we weren't there and called the police. There

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13:44:44 1 was one officer that responded. I don't think I'd
13:44:47 2 ever met that man before. Never seen him. And he
13:44:52 3 said he would write a report. And he was there ten
13:44:56 4 minutes and drove away.

13:44:58 5 Q. That interaction with the male officer
13:45:02 6 focused solely on --

13:45:03 7 A. Yeah.

13:45:04 8 Q. -- the back door of --

13:45:04 9 A. Yeah.

13:45:05 10 Q. -- 33 being kicked down?

13:45:07 11 A. Yeah.

13:45:07 12 Q. Okay.

13:45:14 13 A. I don't think I've -- since this we've
13:45:16 14 called them at all.

13:45:17 15 Q. Have you had -- strike that.

13:45:21 16 Have you filed a claim or any other legal
13:45:23 17 proceeding against any other party, outside of the
13:45:25 18 City of Buffalo or Buffalo Police Department,
13:45:27 19 related to the January 1st, 2017 incident?

13:45:29 20 A. No.

13:45:50 21 Q. Have you given any other interviews,
13:45:51 22 aside from the one to WIVB, regarding this
13:45:59 23 incident? Not anything else.

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13:46:01 1 A. Or anything else?

13:46:03 2 Q. Not anything else.

13:46:04 3 A. Not anything else.

13:46:05 4 Q. Just the January 1st incident.

13:46:08 5 A. No.

13:46:10 6 Q. I don't believe I have any further

13:46:12 7 questions for you. Oh, I do.

13:46:16 8 Sir, do you recall receiving any type of

13:46:19 9 testing to your head in -- in June of 2009?

13:46:38 10 A. I don't remember that far back.

13:46:40 11 MS. HUGGINS: Okay. Fair enough.

13:46:42 12 I have no further questions for you.

13:46:43 13 Thank you for your time.

13:46:46 14 MR. DAVENPORT: All set.

13:46:47 15 THE REPORTER: Will Mr. Davenport be

13:46:50 16 supplied?

13:46:50 17 MS. HUGGINS: He will.

18 THE REPORTER: Thank you.

19 (Deposition concluded at 1:46 p.m.)

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* * *

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1 I hereby CERTIFY that I have read the
2 foregoing 160 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on February 6, 2020.

7
8
9 -----
10 JAMES KISTNER
11
12
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22
23

1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

Anne T. Barone

19

ANNE T. BARONE, RPR,
Notary Public.

20

21

22

23

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